TELOS

Number 70 Winter 1986-1987

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BAUMAN The Left as the Counterculture of Modernity
BREUER The Metamorphoses of Natural Law
PELLICANI Ortega's Theory of Social Action

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Introduction

In the 1960's, when student radicals sought to re-examine the nature of American society in order to make sense out of the contradiction between the "Great Society" dream and the Vietnam imperialist reality, they soon discovered the intellectual void that had been created by McCarthyism in the 1950's beteen them and the previous generation of social critics. One of the reasons Telos *was founded was was to bridge the gap. In undertaking such a project, however, it was necessary to rely on more than a few radical but otherwise politically naive graduate students. It was at that point that the few radical scholars of the pre-WWII generation who had managed to sail through the stormy 1950's with both their academic jobs and their intellectual integrity turned out to be extremely helpful —even though their radicalism hardly meshed with that of the new generation. Mitchell Franklin was one of these rare people who became very instrumental both in the creation of* Telos *and in giving the journal its original Europeanist orientation. Mitchell Franklin passed away in Buffalo August 5, 1986. In the following special section dedicated to him, several of hist former students provide an overview of his work and of his place in American intellectual history.*

With the Reagan presidency mired in scandals and crises, it is becoming increasingly clear that the neo-conservative philosophy with which he promised to revive American society is a self-contradictory ideological "paper tiger." Thus, it is useful to re-examine how such a dubious bill of goods could have been so successfully sold to the American electorate. Tim Luke carefully examines the qualitative changes that have taken place in the past decade resulting in such a depoliticization of electoral campaigns as to make possible Reagan's landslide mostly on the basis of effective marketing techniques and a new type of televisual *charismatic politics. Although this alone does not explain why the Democrats —who employed roughly the same techniques— were so badly beaten, and downplays actual political issues, Luke's account does indicate the extent to which American democratic processes have been effectively depoliticized.*

This depoliticization is obviously connected with the disintegration of any meaningful internal opposition. In relation to the possibility of revitalizing the Left, Zygmunt Bauman suggests a shift in its identity from the "counter-culture of capitalism" to "the counter-culture of modernity." His account of the emancipation of capital from labor may not be entirely convincing, and the warning about the abridgment of democratic freedoms and increasing surveillance could be seen more as an unwarranted transposition of East European fears to an American context than actual dangers. In fact, as Luke shows, in the U.S. democratic processes are being increasingly trivialized and depoliticized so that it is unnecessary for the power structure to abridge them, and surveillance over everyday life is, from the same viewpoint, also a waste of time. Yet, Bauman's suggestion to the Left to forget about the working class, de-emphasize economics, and rather focus on culture and politics, is well taken. Unless the Left succeeds in dealing with culture and politics as something more than mere superstructural epiphenomena, it is likely to remain the counter-culture of academic triviality.

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In other articles, Stefan Breuer looks at the resurgence of interest in natural law as a ground for legality and shows the extent to which it is impossible to recycle it in this fashion; and Luciano Pellicani examines Ortega's theory of social action in relation to the more broadly accepted, yet weaker, accounts of Weber and Durkheim.

In the Notes and Commentary *section, Schwartz criticizes Habermas' distinction of system and lifeworld by looking at artificial intelligence systems. Given the sophistication of these systems, today they can readily duplicate the common sense principles operating in the mundane dimension of "the private." Habermas of course has fashionably relabelled the lifeworld, thus confusing it with Husserl's more sophisticated account whose precategorical character does remain beyond the reach of any computer simulation. The ability of artificial intelligence systems to effectively simulate this Habermasian impoverished version of the lifeworld points to the extent to which his inability to articulate an account of alienation in other than communicative terms results precisely in that cooptation of the "human dimension" by the system that the distinction of system and lifeworld was meant to prevent. The bottom line is that no amount of terminological plagiarism from other more sophisticated traditions will ever turn a mundane ideological account like communication theory into a theory of emancipation.*

The Gorz interview provides a summary, in his own words, of Gorz' intellectual trajectory during the last 30 years, from his Sartrian beginnings to his concern with decentralization. Here the focus is on the establishment of small communities of producers and a life-income system independent of labor time. Regardless of the objective possibilities of bringing about this state of affairs, it is refreshing to find some social critics still unafraid to articulate utopian alternatives.

Although Baccianini tends to overextend the meaning of genocide from "the deliberate and systematic extermination of a minority or racial group" to "the refusal of the right of entire groups of human beings to exist," thus unnecessarily diluting the concept, he vividly indicates how genocide has been secularized, bureaucratized and made efficient by modern totalitarian states with unprecedented technological means to carry out mass extermination. Thus, efficient genocide has become a twentieth century bureaucratic skill.

In continuing an earlier debate concerning the meaning of the now off-the-air TV series "Columbo," Zaslove shows how previous accounts (in Telos *# 66) fail to emphasize the main character's more sinister qualities as a cynical bureaucratic personality type incapable of resistance. Whether any products of the culture industry can ever be such an expression of absolute positivity, however, remains doubtful.*

Last, but not least, this issue includes Lämmert's recently delivered laudatio *for Leo Lowenthal. Lämmert praises Lowenthal for his original approach to the sociology of literature as an attempt to understand the history of bourgeois society, and as a means to comprehend contemporary realities. For Lowenthal, a literature which fails to critically interpret its social context degenerates to the level of a mere commmodity. In the age of postmodern literary criticism, this approach dares to retain a system of social ethics and thus avoids the "aimlessness" resulting from the collapse of utopian thought.*

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Mitchell Franklin
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Essays in Memory of Mitchell Franklin

Robert D'Amico

From 1969 through the 70's Mitchell Franklin was Emeritus Professor of Law and Philosophy at SUNY Buffalo. Over this period his teaching gradually shifted to philosophy where he gave a series of lectures on Hegel, Marx and Neo-Hegelianism, which attracted and influenced a new group of students. These philosophy students were rediscovering the Continental tradition and turning to phenomenology, Western Marxism and German Idealism against the positivist and analytic traditions which had a dying but tenacious hold on philosophy. The following essays are in memory of Franklin's influence and theoretical work. Hopefully these essays can begin to make him part of an ongoing discussion and overcome the obstacles of his style and hard to locate publications.

Most of Franklin's interpretive strategies are built on links between philosophy and law, links completely different from an orthodox philosophy of law. His first strategy concerns "public opinion" and such distinctions as public and private, citizen and legislator.

Franklin treated Hegel's political and theoretical philosophy as a discussion of public or constitutional law. He read Hegel as attacking all forms of feudal "privacy": thus an Enlightment radical. Also, as Franklin loved to point out, Hegel explicitly demanded a civil code. "Hegel relates the theory of revealed religion to the history of the rule of law, especially to the stoicism of Roman law. The so-called subjects of law ... become subordinated to the jurist, who is the so-called neutral judge of the rule of law. Hegel's is an alienation theory in the sense that these subjects are in truth objects because they have been seized or appropriated by the neutral jurist. Though in the *Philosophy of Law* Hegel describes the nineteenth century jurist as enjoying the domination that the owner has in the alienation relation of master and slave, in his discussion of religion he relates such dominion to the ... ambiguous or shifting unhappy religious consciousness ... In all his discussions of law Hegel perceives the rule of law as an untrue appearance which masks ... arbitrariness ... the power of the jurist ... over the contradiction or Kantian antinomy. This possibility of choice is the jurist's historic intention or historic *project*."[1]

Franklin analyzed the "common law" tradition in Hegelian terms as "hidden mediation" or what Franklin called the "ahistoric Prince." Franklin lists

1. Mitchell Franklin, "The Mandarinism of Phenomenological Philosophy of Law," *Phenomenology and the Social Sciences* vol. 2, edited by Maurice Natanson, (Evanston: Northwestern University Press, 1973), p. 491.

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as examples of external or hidden mediation, "the physiocratic, 'unhistoric' jurist, ... Descartes' god-assistant, Kant's holy moral legislator, and Leibniz' holy watchmaker ... Such external mediation or lordship justifies the irony, ambiguity, equivocation, *Verstellung*, or hypocrisy for which Hegel repeatedly condemns Kant ... and German Romanticism."[2] The common law jurist exercises power through interpretive ambiguity or irony over the unwritten code. Hegel, according to Franklin's reading of Hegel's *Philosophy of Law*, rejected this typical eighteenth century solution of "enlightened despotism" because in Hegel's system all mediation must become rational, which means public rather than private, critical rather than posited, and internal or systematic rather than external and *ad hoc*.

From this vantage point Franklin crafted a powerful reading of Hegel's *Phenomenology of Spirit*. In Franklin's view, Hegel constructed the *Phenomenology* around a series of determinant social structures all based on private property and therefore a specific juridical consciousness. Hegel traces juridical consciousness through the book, sometimes expressing itself in natural law, moral law or judgment *tout court*. Franklin used "juridical" as a metaphoric or textual tool connecting the Roman law tradition with Hegelian social analysis. "Whether the other is being or nothingness, subject or object, it cannot be evaded by the bourgeois theorist of law. Hegel perceived the weakness of the history of law in societies based on private property, beginning as he does with stoic Roman law and concluding with the legal theory of ... romanticism ... Hegel perceived, throughout legal history, the relation of jurist and 'subject' of law ... as objects of law, ... [as in] his famous discussion of domination and servitude in the *Phenomenology*. Similar ideas explain Kafka's *Prozess* and possibly certain writings of Brecht and Musil."[3]

Franklin's second interpretive strategy demonstrated how privatized interpretation in modern law allows the judge or legislator to engage in *Verstellung*: concealing contradictions by conceptual shifts or displacements. As a rule Franklin read any of Hegel's treatment of objectification and alienation as legal theory. For example, in a central chapter "Spirit in Self-Estrangement" Hegel describes the relation of consciousness to State Power as "flattery." Franklin traced this odd choice of term back to the Diderot and D'Alembert *Encyclopedia* where, surprisingly enough, there is an article under the title "Flattery." The article turns out to be Hegel's source since it is a fascinating discussion of language, morals, psychology and legality. But it also outlines a strategy of hypocrisy and dissemblance that Franklin thought was essential to bourgeois society. Franklin once again linked concepts in Roman Law and Enlightenment political theory against the background of theoretical and practical struggles over appropriation. Franklin's treatment of the "flatterer's" relation to State Power was thus both exegesis and critique.

2. *Ibid.*, p. 490.
3. *Ibid.*, p. 482.

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Franklin's third interpretive concept was "infamy," which, as Di Filippo discusses, Franklin used in a series of articles on the Fifth Amendment. Again he took his hint from Hegel and the category of "base" consciousness. As Franklin read the famous master/slave section of *Phenomenology of Spirit* he saw legal echoes in the reduction of the slave to "nothing" through fear of death. The very feudal notion of a "base" consciousness, which Hegel later calls "ignoble," remained as a power structure embedded in bourgeois thought. Social structures based on *occupatio* (by which Franklin meant any form of seizure or appropriation of property or persons) always have means by which subjects are denied "reality." This denial takes such forms as the death penalty, slavery, racial distinctions, judicial privileges or property qualifications. "The physiocratic natural law jurists of the eighteenth century raised the question whether legislation which violated natural law did not have as sanction the infamy of the wrongdoer. Infamy is a most important instrument of criminal law, because, like death itself, it ruptures the social relations of the criminal, turning him dialectically into nothingness. This sanction, democratized, appears generally in the text of the Fifth Amendment of the Constitution. Infamy appears ... in Hegel [where he] discusses the struggle between the noble consciousness and the infamed or base consciousness in feudalism. Although the physiocrats mention the infamy of the legislator in mistaking the natural law, this sanction does not touch ... the jurists, who are privileged ... After the French Revolution, the *code civil* provided in substance that the judge who refuses to decide a case on the ground of the insufficiency, obscurity, or silence of the law is guilty of the crime of denial of justice."[4]

In an important series of articles during the days of the House Unamerican Activities Commitee, Franklin fought their power and influence not in defensive terms of the First Amendment of free speech and political affiliation but on Fifth Amendment grounds. Franklin emphasized that such political investigations were another historical variation of bourgeois law's struggle to exempt itself from universality. The Committee sought to deny persons "social existence," hence it threatened them with an infamy forbidden by the Fifth Amendment, in Franklin's view. The Enlightenment warning against "infamy" was, for Franklin, an example of the hidden, subversive quality of these Amendments, or Second Constitution as he called them, and their potential for social struggle.

Given this brief review of Franklin's general approach I now turn to the Di Filippo and Fraser essays which discuss Franklin's defense of codification against common law. Each emphasizes that Franklin's commitment to socialism and democracy was behind his defense of civil law. However, I think the issue is a bit more complex. Fraser, for example, criticizes Franklin for not seeing that codification is just as much a product of class interest as common law practice. Fraser suggests that Franklin, inconsistently, wants to give auton-

4. *Ibid.*, p. 744.

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omy to the codified legal superstructure. Further, Fraser suggests that common law may involve just as much or more democratic decision making. But he misses Franklin's point.

Franklin, like a good Marxist, did not think a legal structure could be inherently democratic. Codification was an expression of bourgeois society, as he often repeated. The difference between civil and common law was not democracy *per se* but how the democratic process entered into the law. With common law it did not enter at the level of judicial decision which just reflected "opinion" or "tradition." Thus, democracy meant the formal power to remove some judges from office. But Franklin was not concerned with that form of democracy. What he wanted was democratic debate on the formulation of law itself. The only way in which that would happen was for the act of "interpretation" to be public, debatable and decidable on some rational and accessible principles.

The appeal to hidden traditions, opinions and cases in common law mystified and *professionalized* the practice of interpretation because its purpose was to build in ambiguity or "irony." Law can then escape principles when required. Common law thus limits the sphere of debate. But a codified, civil system will not guarantee enlightenment or democracy. It only makes explicit the social contradictions and *Verstellung* within legal power and interpretation. Franklin's politics rejected the weight of "tradition" because he wanted public access to law's very "reason." Public access through the election of some judges and legislators comes after interpretation has been shaped and established by the case book method; thus too late. Is it surprising that both Law Schools and their latest radical occupants find Franklin irrelevant?

Studying with Franklin was unique, not in the least because as he constantly talked of ambiguity, contradiction and irony, he lived these categories. He was first and foremost a scholar of the old school; a traditionalist. His vision was encyclopedic, his reading omnivorous and his approach often abstruse and quirky. He was, finally, an Hegelian in a time when Absolute Idealism was impossible to maintain and yet a Marxist whose commitment was a faith not open to discussion.

He was a legal scholar that American Law Schools could no longer accomodate. He knew the history of law in detail, he read in several languages and thought all law students should know Latin, he often cited Ancient Greek, Roman, German Idealist and modern philosophy in law lectures.[5] What he

5. He would often lecture his law school students, to their total incomprehension, on Carl Schmitt, Heidegger and why scholars like Hart, Pound and Dworkin were neo-Kantians. How did they digest a discussion connecting Heidegger's *Entfernung* to Schmitt's friend/foe doctrine and Savigny's "distancing" theory of possession? A flavor of this wild blend can be tasted in the concluding section of the article cited above.

Franklin's career was also an endless supply of surprises. He was a "governor" for towns reclaimed by the Allies at the end of the war, he was a clerk at the Nuremberg trials, he worked for the UN in its first years and as a young man wrote a "friend of the

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was totally uninterested in was what some cretinous judge in Alabama thought about moveable property or verbal contract. Case law was for him the lowest level of teaching and learning imaginable. His most amusing interactions were with the typical law student who, in a desperate effort to ensure a good grade, tried to figure out what Franklin would expect on exams.

I think he always was mystified by his final generation of students. Some who took his political faith as central evolved into sad syncophants for the latest dogmatism of Mao, the third world, the Black Panthers or anti-theoretical activism. The students who took his work in philosophy and legal history seriously were often skeptical of Soviet Marxism, highly unorthodox in their politics and yet willing to follow him in his arcane work on Hegel and the history of philosophy. Though he privately felt confused by either reaction, the truth was that probably both read him as he was; a theorist of "dissemblance."

I saw him last in December 1986, only months before his death. After a long illness, he was a prisoner of his apartment. But it contained the philosophical part of his large personal library, so with his wife Virginia's support he worked until the very end. Though BBC radio was his only link with world events, his health and the world faded into the background as he told me of his plans for another article on Leibniz. Suddenly he was the lecturer I had known and just as suddenly I got some odd insight, perhaps through a strange quote by Leibniz I had never heard before, or some lineages he had patiently reconstructed or once again the importance of Roman Law for early philosophy of science.[6] I doubt that I could recall what Franklin told me about Leibniz. Most likely he simply reminded me of how his love for old texts, his patient archaeology of the layers and sediments of Western intellectual history, and his practice of the art of reading could lead such a legal theorist, through the complex paths of a life rich in thought and action, always back to Hegel and Marx.

court" brief defending Sacco and Venzetti in their final appeal. He was an accomplished photographer, but would only shoot cultural objects, and along the way acquired an expertise concerning the history and manufacture of lenses.

6. Franklin's judgement on this point has finally been confirmed and developed by Harold J. Berman's massive *Law and Revolution: The Formation of the Western Legal Tradition*, (Cambridge: Harvard University Press, 1983). See especially chapter 3, "The Origin of Western Legal Science in the European Universities," pp. 120-164.

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Mitchell Franklin and Roman Law

Terry Di Filippo

Mitchell Franklin's contributions to American legal thought were in large part the result of his devotion to the study of the United States' Romanist legal heritage. A leading theme of his work is that the Roman legal tradition presents more promising prospects for progressive legal developments than the Anglo-American common law tradition. Thus, Franklin became an advocate of Roman-style codification of American law which began with the American revolution and has continued.

His Romanist position sharply distinguished Franklin from almost all American jurists of this century, even those considered liberal and progressive. Thus, Franklin criticized Holmes for his Anglophilic Humean[1] conceptions of law and judicial hegemony.[2] Roscoe Pound believed certain aspects of Romanist legal method to be superior and their American reception[3] inevitable. Pound also emphasized the importance of comparative law and of borrowing concepts and precepts from other legal systems to meet new legal problems.[4] Yet, Pound on the whole was dedicated to reviving the "spirit of the common law."[5] The many American jurists influenced by Max Weber, including the contemporary "critical" legal theorists, have shown no preference for the institutions of enlightenment Roman law. [6] Also, contrary to Franklin,

1. Mitchell Franklin, "The Formulation of the Conception of Aggression," (Pamphlet published by the International Association of Democratic Lawyers, 1952), pp. 11, 12.

2. Mitchell Franklin, "Concerning the Historic Importance of Edward Livingston," Tulane Law Review (henceforth cited as "TLR"), vol. 11 (1937), p. 183.

3. Roscoe Pound, "Common Law and Legislation," *Harvard Law Review*, vol. 21 (1908), pp. 385-86.

4. R. Pound, "The Theory of Judicial Decision," *Harvard Law Review*, vol. 36 (1923), p. 642; Pound, "Philosophy of Law and Comparative Law," *University of Pennsylvania Law Review*, vol. 100 (1950), pp. 1ff.; Pound, "The Revival of Comparative Law," *TLR* vol. 5 (1930), pp. 1ff.

5. One of Pound's best-known books is entitled *The Spirit of the Common Law* 1921, (Boston: Beacon Press, 1963), and consists of an attempt to preserve and reinforce the essential elements of the common law system.

6. Weber conjured an "ideal type" of the nature of modern law, purporting to describe "rational" qualities typical of modern law. He obscured the significance of the differences between the civilian and Anglo-American common law systems, between codifiers and anti-codifiers, between empiricists and rationalists, etc., considering all of them "rational" in one way or another, all driven by the inexorable process of "bureaucratization." Weber thus began superstructurally and neglects the development

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some urge that the traditional common law "equity" may accommodate revolutionary social changes.[7] However, Franklin's legacy is that the American Romanist legal tradition is an important element of American law, and offers the best possibilities for extending democracy in the U.S.

Franklin's Dedication to Romanism

In 1930, at the age of 28, Franklin left his position with a prestigious Wall Street law firm to accept an appointment as full professor at Tulane University Law School in New Orleans. Though Franklin had his choice of a number of teaching appointments, he selected Tulane because of Louisiana's unique history as the only state which had patterned its legal system on a Romanist model. In 1808 Louisiana produced its own civil code after the French Civil Code of 1804 (also known as the *Code Napoleon*) and, due in large measure to the work of Edward Livingston, successfully defended its Romanist code against the strong pressures for the adoption of English common law.

Immediately upon arriving in New Orleans, Franklin set about to revive interest in the study of the European sources of Louisiana's civil law heritage. Virtually single-handedly he created and administered the law school's graduate program in civil law studies, and continued as its chief administrator over a period of 35 years. Several of his earliest published articles illuminated the connections between Louisiana's codes and their French sources.[8]

In the 1930s when a constitutional crisis raged between the progressive New Deal forces lodged in Congress, and the Roosevelt Presidency, on the one hand, and the conservative Supreme Court, on the other, Franklin broadened his Romanist studies to include an examination of the Romanist foun-

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of productive forces which underlies "bureaucratization" and other distinctive phenomena of modern states. See Max Rheinstein, ed., *Max Weber on Law in Economy and Society* (Cambridge: Harvard U. Press, 1954, Edward Shils and Max Rheinstein trans.), pp. 1-10, 63-67. Also Roger Cotterrell, "Legality and Political Legitimacy In the Sociology of Max Weber," in David Sugarman, ed., *Legality, Ideology and the State* (London and New York: Academic Press, 1983) pp. 69-93. For an example of the approach of those in "Critical Legal Studies" see, Roberto Unger, *The Critical Legal Studies Movement* (Cambridge: Harvard U. Press, 1986) pp. 1-14. Unger, attempting to represent the leading edge of "CLS" thinking, conceives all "conventional" modern jurisprudence as "formalist" and "objectivist." Such a conceptualization places both the historical school of law and enlightenment natural law in the same category, thus confounding opposed positions in the history of bourgeois legal thought.

7. See, for example, Michael Tigar and Madeline Levy, *Law and the Rise of Capitalism* (New York and London: Monthly Review Press, 1977), pp. 257-74, 287.

8. "La possession vaut titre and bona fide purchase" *TLR* vol. 6 (1932) p. 589; Review of Dart, *The Civil Code of Louisiana*, *TLR* vol. 7 (1933), p. 632; "Equity in Louisiana: The Role of Article 21," *TLR* vol. 9 (1935) p. 485; "Concerning the Historic Significance of Edward Livingston," *TLR* vol. 11 (1937), p. 163; "The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law from Louisiana," *TLR* vol. 16 (1942), p. 319; "The Eighteenth Brumaire In Louisiana: Talleyrand and the Spanish Medieval System of 1806," *TLR* vol. 16 (1942), p. 514.

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dations of the U.S. Constitution. Several articles written between 1937 and 1942 document the hold of continental enlightenment ideas on Jefferson, Madison and John Adams and the employment of those ideas in the U.S. and state constitutions.[9]

Franklin's Study of the Romanist origins of the American constitution continued unabated throughout his career,[10] and confronted the mainstream of American legal scholarship, including that of his teacher, Roscoe Pound, which persistently portrayed American constitutional legal ideology as exclusively British in origin. [11]

Upon U.S. entry into the United Nations at the end of WWII, Franklin promptly pursued the Romanist history of the veto powers accorded to the permanent members of the Security Council, finding their legal and conceptual roots in the class struggles between plebians and patricians in ancient Rome. He conceived the principle of veto or tribunitial powers to be of prime importance in understanding the constitutional separation of powers, foreseeing that it might emerge as a leading principle of legality in clashes in which conflicting social forces controlled different branches of the American government.[12]

Franklin persistently invoked his enlightenment-based interpretations of the Constitution repeatedly in the struggles against racism and in favor of broadened civil liberties. In particular, his reading of the Fifth Amendment as

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9. "The Passing of the School of Montesquieu and Its System of Separation of Powers," *TLR* vol. 12 (1937), p. 1; "The Constitutional Struggle," *National Lawyers' Guild Quarterly* (henceforth *NLGQ*), vol. 1 (1938), p. 357; "Brutus, the American Praetor," *TLR* vol. 15 (1940), p. 16; "The Judiciary State I," *NLGQ* vol. 2 (1940), p. 244; "The Judiciary State 11," *NLGQ* vol. 3 (1940), p. 27.

10. "The [Enlightment] Encyclopediste Origin and Meaning of the Fifth Amendment," *Lawyers' Guild Review* vol. 15 (1955), p. 41; "Concerning the Influence of Roman Law on the Formulation of the Constitution of the United States," *TLR* vol. 38 (1964), p. 621; "The Ninth Amendment as Civil Law Method," *TLR* vol. 40 (1966), p. 487; "The Influence of the Abbe de Mably and of Le Mercier de la Riviere on the American Constitutional Ideas Concerning the Republic and Judicial Review," Roscoe Pound, Irwin Griswold, Arthur Sutherland, eds., *Perspectives of Law: Essays in Honor of Austin Scott* (Boston: Little Brown & Co., 1964), p. 96; "Some Considerations on the Existential Force of Roman Law in the Early History of the United States," *Buffalo Law Review*, vol. 22 (1972), p. 62; "Romanist Infamy and the American Constitutional Conception of Impeachment," *Buffalo Law Review*, vol. 23(1973), p. 313. See also, "Further Considerations Reacting to Romanist Infamy and the American Constitutional Conception of Impeachment," *Ibid.,* vol. 24 (1974), p. 29.

11. Roscoe Pound, *The DeveIopment of Constitutional Guarantees of Liberty* (New Haven: Yale University Press, 1957).

12. "The Roman Origin and the American Justification of the Tribunitial or Veto Power in the Charter of the United Nations," *TLR* vol. 22 (1947), p. 24; "Problems Relating to the Influence of the Roman Idea of the Veto Power in the History of Law," *TLR*, vol. 22 (1948), p. 443; "Concerning the Mission and Contemporary Force of Romanist 'Intercessio'," *Studi in Honore di Vincinzo Arangio-Ruiz*, vol. 2 (1952), p. 269.

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forbidding racism as Romanist infamy aroused widespread interest.[13] Franklin also stressed the importance of Romanist studies for explicating the social philosophies of Hegel and Marx. He considered Hegel a first-rate legal theorist and viewed his *Phenomenology of Spirit* as "in large measure an account of the failure of the idea of the rule of law at several important and decisive moments in the history of Roman law."[14] Franklin emphasized Marx's Roman law researches, and his study with Savigny, the greatest 19th century Romanist scholar.[15] Specifically, he traced the importance of categories in Roman law for theories of alienation.[16]

Above all, Franklin dwelled on the need for American adoption of certain aspects of classical Romanist legal method.[17] He regarded the supercession of

13. "Infamy and Constitutional Civil Liberties," *Lawyers' Guild Review*, vol. 14 (1954), p. 1; "The Encyclopediste Origin of the Fifth Amendment," *op. cit.*; "The Unconstitutionality of Interposition," *Lawyers' Guild Review*, vol. 16 (1956), p. 45; "The Relation of the Fifth, Ninth and Fourteenth Amendments to the Third Constitution," *Howard Law Journal*, vol. 4 (1958), p. 170; "Interposition Interposed I," *Law in Transition*, vol. 21 #1 (1961), p. 1; "Interposition Interposed II," *ibid.*, vol. 21 #2, p. 77.

14. "The Legal Method in the Philosophies of Law of Hegel and Savigny," *TLR*, vol. 44 (1970), pp. 766, 769; "The Conflicting Significance of Hegel and Savigny in the Development of a Romanist Theory of Private International Law," *Studi in Onore di Giuseppe Grosso*, vol. 2, (Turin: G.Giappichelli, 1986)p. 423.

15. The extent of Marx's study of Roman law is outlined in his "Letter to His Father," reproduced in Lloyd Easton and Kurt Guddat, eds., *Writings of the Young Marx* (Garden City, New York: Doubleday & Co., 1967), pp. 40-50.

16. Against existential theories of alienation as "distancing," Franklin interpreted Marx's theory of alienation in terms of the Romanist legal category of "occupatio" or seizure. See "Interposition Interposed II," *op. cit.* p. 78; also, Franklin, "Dialectical Contradictions in Law," in Ervin Marquit, Philip Moran, Willis Truitt, eds., *Dialectical Contradictions: Contemporary Marxist Discussions* (Minneapolis: Marxist Educational Press, 1982), p. 196; also, "Legal Method in Hegel and Savigny," etc., *op. cit.* pp. 781-85.

17. No less that sixteen of his articles focused on this theme. "Some Considerations on the Existential Force of Roman Law In the Early History of the United States," *Buffalo Law Review*, vol. 22 (1972), pp. 62-105; "Legal Method in the Philosophies of Law of Hegel and Savigny," *op.cit.*; "The Philosophy and Legal Philosophy of Chaim Perelman," *Buffalo Law Review*, vol. 19 (1970), p. 261; "Bracton, Para-Bracton(s), and the Vicarage of the Roman Law," *TLR* vol. 42 (1968), p. 455; "The Ninth Amendment as Civil Law Method," *TLR*, vol. 40 (1966), p. 487; "Concerning the Influence of the Roman Law on the Formulation of the Constitution of the United States," *TLR*, vol. 38 (1964) p. 621; "Alienation and Hegel's Justification for Codification," *TLR*, vol. 33 (1958), p. 133; "The Significance of Stoicism in Roman Law [and] Hegel's Theory of Alienation," *Acta Juridica* (1958), p. 246; "Monadic Legal Theory and the Perspectives for World Law," *Philosophy and Phenomenological Research*, vol. 16 (1955), p. 201; "The Kantian Foundations of the Historical School of Law of Savigny," *Revista Juridica de la Universidad de Puerto Rico,* vol. 1952-53, p. 64; "A Study of Interpretation in the Civil Law" *Vanderbilt Law Review*, vol. 3 (1950), p. 557; "A New Conception of the Relation Between Law and Equity," *Philosophy and Phenomenological Research*, vol. 11 (1950), p. 474; "Concerning the Historic Importance of Edward Livingston," *op. cit.*; "On the Legal Method of the Uniform Commercial Code," *Law and Contemporary Problems*, vol. 16 (1951), pp. 330-43; "The Historic Function of the American Law In-

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common law method by Roman law method as an issue whose "importance cannot be overstated,"[18] not only for a progressive development of the laws, but also for its philosophical and cultural implications. He believed classical civil law codes superior in system and method to any national systems existing under Anglo-American laws. The very lack of system characterizes Anglo-American law and distinguishes it from modern civil law. The Anglo-American countries never rationalized or codified their laws under professional scholars as did continental European countries during the 19th century. England and the U.S. have permitted large areas of law to remain "common law" in which there is no expressly formulated statute or code, and the law must be gleaned from an agglomeration of judicial opinions, often referred to as "precedents." Since the various and multitudinous "precedents" are usually conflicting, contradictory and uncertain in their range of applicability, and since they are continually subject to modification or even to complete abrogation in any given proceeding, the result is a perpetual disorder and confusion as to the content of the "laws." Even where statutes exist in English and American law, they are almost invariably subordinated to judicial interpretations in particular cases; these interpretations become parallel or superior authorities which may modify or abrogate statutes.

The difference in legal reasoning between the two systems is so great that the lawyers of one system are utter strangers to the reasoning patterns of the other.[19] Because it favors written, formulated law, as epitomized in classical codification, the Romanist legal methods enhance the authority of written texts. It would be futile to undertake precise codification if the judges will not be bound to respect the authority of the code texts.[20] In the Roman tradition, legal reasoning generally takes a formulated text as its starting point; "applying" the text to the case consists in interpreting the case in accord with the textually specified principles.

Because it favors the authority of judges and their opinions, Anglo-American legal method reasons from prior judicial decisions. Even where a statute pertains to the subject under review, reasoning commences with the interpretations given to the statute in prior judicial opinions, rather than with the text of the statute itself.

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stitute: Restatement as Transitional to Codification," *Harvard Law Review*, vol. 47 (1934), p. 1367; "The Legal System of Occupied Germany," in *Interpretations of Modern Legal Philosophies* (New York: Oxford University Press, 1947), p. 262.

18. Franklin, Review of Robert Henry Holland and Georg Schwarzenberger, eds., *Law, Justice and Equity: Essays in Tribute to George Keeton, TLR* vol. 42 (1968), p. 2.

19. Franklin, "Law, Morals and Social Life," *TLR* vol. 31 (1957) pp. 465, 466.

20. For this reason, Karl Llewellyn, seeking to protect the intellectual advances represented by the formulation of the Uniform Commercial Code against erosion by judicial glosses, promulgated sections 1-102.1 and 1-102.3 and certain "motifs" of the code, which require quasi-Romanist methods of employing the codes. See Mitchell Franklin, "On the Legal Method of the Uniform Commercial Code," *op. cit.* Like Pound, however, Llewellyn wished to confine the benefits of codification and advanced legal method to the areas of commercial and property law.

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Franklin concisely summarized the difference: "The legal method of Roman law is essentially a method of interpreting, of developing or of overcoming formulated law. The legal method of the Anglo-American common law is essentially a method of applying, of developing or of overcoming unformulated law ... case law ... law based on decisions in particular instances."[21] He saw that the Romanist method has the better potential for protecting and developing the possibilities of progressive Constitutional and legislative texts, because it lends great respect to the text, and permits it to serve as a source for further developments. In rivalry with the legislature, Anglo-American judges have refused to extend written texts beyond their literal meaning. At the same time, judges eagerly employ judicial "precedents" with expansive force when convenient, even encroaching upon or negating legislation. Judicial abrogation of legislation has often thwarted popular reform efforts.[22] Hence replacement of common law method with the Romanist legal method is necessary to defend and deepen the gains represented by the Bill of Rights, the 13th, 14th and 15th Amendments, labor legislation, the civil rights act and other progressive legal texts.[23] Franklin viewed the struggle for the adoption of Romanist legal method as an aspect of the broader struggle to negate alienation imposed superstructurally, through culture, ideology and language as well as through law.

The historical dichotomy between the two approaches arose, Franklin argues, because England, in the transition from feudalism to capitalism, failed to undertake the complete overhaul of its legal system. England permitted a good deal of the unsystematized, feudal common law to remain in force, only changing so much of the usage and content of the legal terms as was necessary

21. Franklin, "Law, Morals and Social Life," *op. cit.* pp. 466-67. "Although law is a certain means of social control employed within a particular national State, still it is possible to speak of Roman law in general and of Anglo-American common law in general. What this means is that the particular national legal systems are determined by the legal method of the Roman law or the Anglo-American common law. Indeed, there are two principal legal methods, that of the Roman law having flourished for about twenty-five centuries, and that of the Anglo-American common law having existed for three, perhaps more, centuries."

22. Leading examples are the Slaughterhouse cases (1870); the flurry of court-stricken labor enactments, culminating in *Lochner v. New York* (1905); the courts' assault on the progressive Rooseveltian legislation in the 1930s; the court's circumvention of First Amendment guarantees during the 1950s and 1960s in *Dennis v. U.S., Barenblatt*, and many other cases.

23. "The process of deepening legality represents a brilliant accomplishment of Romanist legal method. Here the text is developed beyond its genuine textual meaning to control determinations beyond such meaning ... This method ... is markedly different from the classical legal method of the Anglo-American common law which tends to resort to judicial decision when the legislative text falls short. The Romanist method, which treats the text both as law and as the source of law ... is a tremendous resource during a period of rapid social transformation ..." "A Study of Interpretation in the Civil Law," *op.cit.*, p. 562.

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to establish capitalist social relations. Of course, some new concepts and procedures also were introduced, especially in commercial law. Yet, in form and method, the English system remained largely feudal, and "law" remained the unorganized, unsystematized accretion of records of prior judicial holdings on particular cases. Judges and lawyers, the vast majority of whom supported the rising bourgeoisie, retained their exclusive knowledge and control of the customs of the courts. Legal reforms in procedures and meanings, required for the new capitalist formation, were left almost solely to the judges and lawyers to administer and were not publicized to the larger community. Thus, Anglo-American legal thought remains burdened with concepts of feudal origin, which have only confusingly been adapted to modern conditions. In Anglo-American property law such concepts as "chattel" (literally meaning "cow") and "fee simple absolute" continue to affront the student of law.[24] Thus Franklin emphasized the unscientific nature of many Anglo-American legal concepts — a point conceded even by Roscoe Pound.[25] Pound more than once referred to the dictum of the famous English legal philosopher, John Austin, comparing the two legal systems: "Turning from the study of the English to the study of the Roman law, you escape from the empire of chaos and darkness, to a world that seems by comparison, the region of order and light."[26]

In contrast, civil law countries, after the transition from feudalism to capitalism thoroughly transformed their legal systems by comprehensive

24. Engels wrote: "If the state and public law are determined by economic relations, so, too, of course, is private law, which indeed in essence sanctions only the existing economic relations between individuals which are normal in the given circumstances. The form in which this happens can, however, vary considerably: It is possible, as happened in England, in harmony with the whole national development, to retain in the main the forms of the old feudal laws while giving them bourgeois content; in fact, directly giving a bourgeois meaning to the old feudal name." *Ludwig Feuerbach* (New York: International Publishers, 1941), pp. 53-54.

25. "A characteristic of Anglo-American law is the poverty and inadequacy of its conceptualism. With some this is the virtue of British law, to others, the vice. It is difficult to condemn a jurisprudence of conceptions [reference is to Jhering, Pound, Llewellyn] when there never have been conceptions." Franklin, "The Historic Function of the American Law Institute: Restatement as Transitional to Codification," *op. cit.*, pp. 1367, 1387-88. "Uncodified Anglo-American law is still often dominated by its own feudal system of internal types or categories of problems, save insofar as it has been forced to borrow categories, such as "corporeal moveables" or "immovables" from the civil law for purposes of Conflict of Laws. Anglo-American law still needs scientifically justified particular categories of private law, which could be applied consistently both in internal law and in conflict of laws. Such scientific categories may be found in the modern civilian codes. Franklin, "The Conflicting Significance of Hegel and Savigny in the Development of a Romanist Theory of Private International Law," *Studi in Onore di Giuseppe Grosso op.cit.,* vol. 2, pp. 444- 445; also see generally, Mitchell Franklin, "A Precis of the American Law of Contract for Foreign Civilians," *TLR*, vol. 39 (1965), p. 635.

26. John Austin, *Jurisprudence* (London: J. Murray, 3rd ed. 1869), p. 60.

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reformulations or codifications and, in many countries, by severely curtailing the feudal privileges and authority of judges and magistrates. The new codes were clear, concise, and educative in order to fulfill the enlightment conception of the legal system as the chief means of overcoming feudal alienation and producing citizens imbued with the republican virtue of respect for the law. The new codes were conceived as representing the public interest, as distinguished from feudal private interest. As against Hobbes, who conceived the natural human condition as a war of one against all, the leading figures in France optimisticaly conceived men as noble (Rousseau) or malleable (Helvetius), ready to be raised from squalor upon the appearance of a just legislator whose virtuous laws caused personal and public interest to coincide. This enlightment project required codification.

The concept of law as the means of public enlightenment and negation of alienation stems from a long tradition of codification and legal scholarship in Roman Law countries. As early as the 11th and 12th centuries, universities were established to study ancient Roman Law, especially the system constructed under Justinian in the 5th century A.D. With the surge of commerce and international trade, Roman materials were drawn on for a more complete and consistent system of laws. Thus the scholarly university tradition reworked and readapted Roman law, reaching its high point in the classical codifications of France (1804) and Germany (1896).

For more than 1000 years Roman law has been closely connected with a tradition of intellectual study by professional university scholars. This intellectual investment in the legal system is reflected in the clear, elegant, succinct and logical style of modern Roman Law. Law, made clear and concise, could be comprehended by the public at large. Recently Harold Berman has argued that the systematization of law produced intellectual methods and processes copied by the natural sciences. Berman concludes that Roman legal studies rather than the natural sciences served as the historical prototype of scientific method.[27]

Only recently has the professional study of law been established in common law countries. Until this century legal education in England and the U.S. remained a feudal-style apprenticeship.

The educational superiority of Roman law is attested to by those who have had occasion to choose between the two systems. The Japanese, Koreans and Chinese, for example, when confronted within the last century with the decision as to which of the two major capitalist legal systems they should emulate, opted for versions of the modern, codified Romanist systems of continental Europe. These Asian nations recognized that it was virtually impossible to import the thousands upon thousands of volumes of court decisions which comprise the corpus of Anglo-American law and convey to a new caste of legal

27. Harold Berman, *Law and Revolution* (Cambridge: Harvard Univ. Press, 1983), pp. 151ff.

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professionals a sense of how to find law and reason with such materials. On the other hand, the carefully formulated German and Swiss codes, scientific in conceptualization, succinct in expression and logical in organization and structure, reduced primary texts to a few volumes.

Marxism and Roman Law

Marx and Engels perceived the superiority of Roman law and the cultural alienation produced by England's feudal common law. In a passage frequently cited by Franklin, Engels wrote specifically of the feudal nature of American common law, and identified it as an "historical reason" for the intellectual backwardness of the U.S. "[J]ust now it is doubly necessary that there should be on our side a few people who have a firm grasp of theory and well-tried tactics and can also speak and write English; because for good historical reasons the Americans are worlds behind in all theoretical questions; and although they did not bring over any medieval institutions from Europe, they did bring over masses of medieval traditions, religion, English common (feudal) law, superstition, spiritualism — in short, every kind of imbecility which is not directly harmful to business and which is now very serviceable for stupefying the masses."[28]

In contrast to this attutude towards Anglo-American law, Engels wrote that "French law [is] the only modern legal code ... "[29] He also recognized that the success of the French bourgeoisie in creating this advanced legal system was due to the well-elaborated and conceptualized Roman law in continental Europe.[30]

The demand for Romanization of Anglo-American law has not been restricted to Marxists. The great impulse towards codification of the common law began long before Franklin's efforts and even before Marx. Stimulated by the revolution in France and the intellectual ferment surrounding the formulation of the Code Napoleon, Bentham worked feverishly on the codification of English law. He vituperated against the "tyranny" exercised by the English legal profession through esoteric common law usages and methodology. Because it is unwritten, unformulated law, Bentham saw that "common law by its very essence" is "kept most happily and carefully from the knowledge of the people."[31] Because the common law judge is free to revise the "law" as may suit the exigencies of the case before him, the parties may not know in advance whether they have violated the law. Bentham specifically identified common law legal reasoning as a methodology by which the legal profession maintained a monopoly over knowledge of the law.

28. Karl Marx and Frederich Engels, *Selected Correspondence 1844-1895*, trans. I. Laskar, 3rd ed. (Moscow, 1975), pp. 373, 374.
29. *Anti-Duhring*, New York: International Publishers, 1939), p. 121.
30. Frederich Engels, *op. cit.* p. 54.
31. Bentham in John Bowring, ed., *The Works of Jeremy Bentham*, vol. 5 (New York: Russell & Russell, 1962), p. 235.

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As the lay public, and, for that matter, most lawyers, lack the means to ascertain the accuracy of the judge's recitation of sources, and are often unable even to locate them, Bentham regarded common law as conjecture an uncorroborated opinion of the judge. The situation remains much the same today for the non-lawyer facing the Anglo-American judge. The solution Bentham offered was codification, the complete formulation of all law in concise, logical and understandable form. He asked rhetorically, "To what obligation ought the citizens to be subjected without their knowledge? ... Whatever is not in the code of laws ought not to be law."[32]

Bentham's views, of course, found little sympathy within the legal profession. However, codification was the subject of vigorous popular movements throughout the first decades of American history. Politically, the cause of codification was inseparable from other progressive causes of the 1800s. The great code advocate William Sampson, for example, was a leading labor lawyer. Thomas Grimke and his family were among the most active abolitionists. Robert Rantoul agitated for the expansion of public education and for rights of labor. David Dudley Field is famous for penal reform and was connected with the movement for women's rights.

Franklin called attention in particular to the work of Edward Livingston, perhaps "the first legal genius of modern times,"[33] who today goes unmentioned or scarcely mentioned in the typical three-year American law school curriculum.[34] Livingston was an expatriate New Yorker (once mayor of New York City) who removed himself to Louisiana in part because of the strong French legal influence there. Livingston drew on both the French jurists and on Bentham as critics of feudal laws and legal method. Franklin repeatedly cited Livingston's efforts in confronting both Anglo-American and Spanish feudal legal conceptions, and fighting to preserve Louisiana's enlightenment legal heritage. Franklin brought out that, as for the French *encyclopedistes* and so many other exponents of codification, it was the "commitment to democracy that drove Livingston to attack Anglo-American common law and the authority of the common law judge."[35] Like Bentham, Livingston held that esotericism of laws "invariably makes a property of them in the strictest sense of the word ..."[36] Livingston saw that due to the "vacillating authority of judicial decisions," that is, the lack of certainty as to what they mean and as to whether they will be respected in future cases, there is in fact little in the Anglo-American world that may be called "law" in the Romanist sense of the word.

32. *Ibid.*, vol. 3, p. 205.
33. Mitchell Franklin, "Concerning the Historical Importance of Edward Livingston," *op. cit.* p. 212.
34. Franklin, "The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law from Louisiana," *TLR* vol. 16 (1942), p. 319.
35. Franklin, "Concerning the Importance ... " *op. cit.* p. 174.
36. *Complete Works of Edward Livingston on Criminal Jurisprudence*, vol. 1 (1873), p. 161. Cited by Franklin, "Concerning the Importance ... " *op. cit.* p. 183.

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Franklin also saw Hegel as a firm proponent of the progressive enlightment legal ideology embodied in the French Civil Code, and may well be the only Anglo-American writer to have read Hegel in this way.[37] Developing Hegel's thought, Franklin calls Anglo-American law "ironic" because it may be respected or overruled at the judge's pleasure. It consists not of authoritative sources, but of a repertory of possibilities, each of which is capable either of being invoked or suppressed in any given case.[38]

Franklin identified Hegel as a self-conscious adversary of the reactionary "historical school of law" headed by Savigny.[39] He noted the contrary purposes for which Hegel and the historical school employed historical methods, and he cited Hegel's explicit attacks on Haller, a leading jurist of Savigny's historical school.[40] He thus corrected a current conception that Hegel and Savigny were philosophically akin.[41] The historical school represented the feudal and other social forces which combined in reaction to the legal ideology of the French code, and vehemently opposed codification in Germany, England and the U.S.

Hegel demanded the citizen's "self-consciousness" of his legal position: "If laws are to have a binding force, it follows that, in view of the right of self-consciousness ... they must be universally known."[42] But where the law remains uncodified or otherwise inaccessible, such rights are effectively denied: "To hang the laws so high that no citizen could read them (as Dionysius the tyrant did) is injustice of one and the same kind as to bury them in row upon row of learned tomes, collections of dissenting judgments and opinions, records of customs, etc ..." as is done in England and the U.S. Therefore, Hegel concluded, "No greater insult could be offered to a civilized people or to its lawyers than to deny them the ability to codify their law ..."[43] as Savigny's historical school strove to do.

Franklin considered the struggle over legal form, legal method and legal ideology as an aspect of resisting and overcoming superstructurally imposed alienation. He credited Hegel with recognizing that questions of interpretations and wordings of legal materials, literature and language are arenas of social struggle. Because language as well as labor is an externalization of one's

37. See "Legal Method," *op. cit.*

38. See Mitchell Franklin, "The Irony of the Beautiful Soul of Herbert Marcuse," *Telos*, 6 (1970), pp. 1-35; "Legal Method," *op. cit.* p. 779.

39. "Legal Method," etc., *op. cit.* p. 788; also, "Alientation and Hegel's Justification," *op. cit.* p. 133.

40. Franklin "Legal Method," etc., *op. cit.* p. 788; "Alienation," *op. cit.* p. 136; "The Influence of Savigny and Gans," in *Festschrift für Ernst Rabel* (Tübingen: J.C.B. Mohr 1954), pp. 141, 147ff.

41. See for example John Merryman, *The Civil Law Tradition* 2nd ed., (Stanford University Press, 1985), p. 30.

42. Georg W.F. Hegel, *Philosophy of Right [Law]* (New York: Oxford Univ. Press, 1967, Knox trans.) section 215.

43. *Ibid.*, section 211.

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being, Hegel recognized that such activity is subject to expropriation.[44] Franklin attacked irrationalist philosophies which actively foster such super-structural alienation and "loss of reason." Savigny, for example, founded his philosophy on a conception of a romantic, irrationalist *Volksgeist* underlying social and legal development.[45] As the *Volksgeist* was unknowable, legislation and codification were deemed futile or even harmful. Hegel directly confronted Savigny on these issues: he defended enlightment "self-consciousness" in matters of law and social relations, and eschewed irrationalist theories such as Savigny's which supported feudal animalization or brutalization of the subjects of laws. Hegel saw that lack of intellectual access to the law and legal processes entails ignorance of one's self as a social self.[46] Hence irrationalism's effort to reserve knowledge of correct and actual social relations to the privileged caste of lawyers and other "mandarins" means the relegation of the masses to the status of ignorant, inhuman brutes.

The anti-rationalist philosophy and anti-codification jurisprudence which Franklin has traced to Savigny's historical school of law, and in part to Kant,[47] and which also dominated 19th century American legal thought under the leadership of Kent, Langdel, Carter and others, has more recently taken the form of subjectivist theories of interpretation. Franklin relentlessly villified such theories.[48] By means of esoteric, "hermeneutical" methodology, contemporary bourgeois jurists undermine the enlightenment intention that the "reason" of the lay citizenry enter into and judge the legal processes. As statutory law becomes increasingly prominent in the U.S., interest in idealist hermeneutics has correspondingly increased, winning over even such traditionally-minded thinkers as Ronald Dworkin.[49] As part of the same movement, *Verstehen* or anti-causal theories of legal history have taken strong hold in American law schools, with such precursors as Dilthey, Weber, Husserl,

44. *The Phenomenology of Mind*, Baillie trans., (New York: Harper & Row, 1967), p. 340. Compare discussion by Franklin in "The Significance of Stoicism," *op. cit.* pp. 247ff.

45. Frederick Charles von Savigny, *Of the Vocation of Our Aqe for Legislation and Jurisprudence*, Abraham Hayward transl. (London: Littlewood & Co, 1831; Arno Press New York (reprint 1975)), pp. 24-31.

46. Hegel, *Philosophy of Right*, *op. cit.* sections 211-215.

47. "Savigny's justification of legal method, which he was really the first to study comprehensively and systematically, laid the foundations for the legal subjectivisms which dominate the 19th and 20th centuries." "Legal Method in the Philosophies of Law of Hegel and Savigny," *TLR* vol. 44 (1970), p. 766, 788. See also, Mitchell Franklin, "The Kantian Foundations of the Historical School of Law of Savigny," *Revista Juridica de la Universidad de Puerto Rico* (vol. 1952-53), p. 64.

48. Franklin, "The Mandarinism of Phenomenological Philosophy of Law," In Maurice Natanson, ed., *Phenomenology and the Social Sciences* (Evanston: Northwestern University Press, 1973), pp, 492-501, pp. 534- 545; also, "Legal Method," *op. cit.* pp. 778ff.

49. See Ronald Dworkin, *Law's Empire* (Cambridge and London: Harvard University Press, 1986), pp. 50ff.

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Habermas, Gadamer, Marcuse, and Foucault.[50]

Franklin's historical materialism insisted on interpreting social events, including legal enactments, in terms of actual social forces. While neglecting the pre-eminent role of infra-structural forces, most jurists recognize the important role of historically conditioned ideologies in contemporary legal processes. Thus Pound considered "received ideals of the time and place" as to the nature and purposes of law an integral part of American law[51] and Holmes spoke of the influence of "felt necessities of the time" in determining judicial decisions.[52] Dworkin has urged that "contested concepts" regarding the nature and purposes of law are an indispensable source of law in current American practice[53] and "critical" legal studies speaks of "law as ideology." Indeed, the role of ideology is particularly important in Anglo-American law because of the power of the higher judges to veer "precedents" and statutes according to "felt necessities" and other subjective or "equitable" criteria. For this reason it is important, in defending and advancing legal positions within the existing system, to recall Franklin's work on the Romanist-enlightenment concepts embodied in the Constitution. The progressive ideology of the enlightenment provides an alternative to reconstruction of laws in terms of idealist ideology or hermeneutics. Franklin developed examples of how to use this form of argumentation to meet contemporary crises in his treatment of the fifth amendment as a protection against infamy (of Communists and Blacks); in his treatment of the first amendment as establishing a public-opinion state, and in other areas.[54] His line of argument has, from time to time, found its way into important court decisions.[55]

Franklin was aware of the limits of law in determining the course of history.[56] No superstructural devices could have, for example, prevented the impe-

50. "Irony," *op. cit.* pp. 9-35; Franklin, "On Hegel's Theory of Alienation and Its Historic Force," *Tulane Studies in Philosophy*, vol. 9 (1950), pp. 50, 92-100.

51. See for example, Roscoe Pound, "The Ideal Element in American Judicial Decision," *Harvard Law Review*, vol. 45 (1932), p. 136: "[P]rofessional and judicial ideals of the social and legal order are a decisive factor in legal development. Such ideals may be so generally established ... as to be a form of law in the strictest analytical sense."

52. "The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." Oliver W. Holmes, Jr., *The Common Law* (Boston: Littlebrown, 1881), p.1.

53. Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), p. 103.

54. Franklin, "Infamy and Constitutional Liberties," *op. cit.* etc.

55. U.S. Supreme Court Justice, William O. Douglas, for example, in *Griswold v. Connecticut*, derived a constitutional "right of privacy" by analogy from the personal protections contained in the lst, 3rd, 4th, 5th and 14th Amendments, and specifically justified his extension of rights by reference to the Ninth Amendment. See Mitchell Franklin, "Contribution to an Explication of the Activity of the Warren Majority of the Supreme Court," *Buffalo Law Review*, vol. 24 (1975), pp. 487, 535-543.

56. "[T]he development of freedom and the development of tyranny were re-

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rialism which has characterized modern society for the last 100 years. No amount of scholarly attempts at reconciliation of laws could have brought about rule of law and democracy. For Franklin, the enlightenment ideal of a society governed by an objectively applied, pre-established set of "rational" rules was doomed *ab initio* in a society riven into expropriating and expropriated classes; all the more so since the codes were oblivious to these fundamental capitalist splits. Franklin credited Hegel with perceiving that "property-holding societies have not and cannot realize the rule of law because the reality of social contradictions which such societies engender excludes the actuality or even the possiblity of the rule of law."[57] Such societies, Franklin held, have never been able to eliminate the contradiction between law and "equity."[58] Franklin tirelessly rebuked the recourse of bourgeois "legality" to para-law, equity, *Verstellung*, "external mediation," the "unhistoric prince," reification, hermeneutics, Stoic universals, antinomies, *déplacement*, monadization and other forms of "masking" or hypocrisy associated with legal categories concealing expropriation. He criticized such devices on the ground of the enlightenment ideals of law as fully formulated, harmonized, systematized and published.

Franklin distinguished between progressive, anti-feudal capitalist legal ideology and its reactionary, repressive tendencies. He felt that the progressive elements represent possible bases from which a socialist legality and ideology may commence. The socialist believes that a *project* of harmonious social relations expressed in laws may ultimately succeed, although impossible in class society. For Franklin, the success of such a legal *project* would be due ultimately to changes in the infrastructure. However, the process of codification may assist in bringing the changes about in an orderly, democratic fashion, with as much fairness, justice and educative force as possible, and hence with a minimum of coercion. Thus, Franklin's Marxism persisted in pursuing ideals of codification, scientific legality and democratization through laws.

In contrast, capitalist countries presently advance ever more complex theories of hermeneutics, "interest-balancing," and other forms of neo-equity, thus fleeing from their enlightment heritage. Recently, the U.S. sought to

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flected in law, civil or common; and ... neither the civil law nor the common law created such development. Positive law received its meaning from positive society." "The Influence of Savigny and Gans," etc., *op. cit.*, p. 145. Franklin criticized "idealistic theories of law, according to which the idea precedes material conditions, and forces material conditions abreast of the ideal development ... If idealist theories of law are correct, Louisiana would have developed under its legal system, and have brought its material basis abreast of its ideal superstructure, which reflected historically more developed conditions." in "Some Observations on the Influence of French Law on the Early Civil Codes of Lousiana," in *Le Droit Civil Français* (Montreal: Le Barreau de Montreal, 1936), p. 845.

57. Franklin, "Legal Method," *op. cit.* p. 769.

58. Franklin, "A New Conception of the Relationship between Law and Equity," *op. cit.* p. 474.

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evade the rule of International law in the case of its mining of Nicaragua's harbors. In fact, the flouting of legality by the executive branch has become a persistent feature of American government.

Franklin endeavored that the materials for a socialist legality and democracy could be prepared *in advance* of the infrastructural transformation, to be available to assist in the latter process. In preparing such materials, a thorough review must be made of the superior legal conceptions of classical and modern Roman law. As Pound noted, the growth of legal systems consists in large part of the borrowing and adaptation of materials from other legal systems.[59] Franklin thus took the first steps in a legal task whose outlines and dimensions are just beginning to take form.

59. As a general rule, Pound wrote, "the history of a system of law is in large part a history of borrowings of legal materials from other legal systems and of assimilation of materials from outside the law." in "The Theory of Judicial Decision" *op. cit.* p. 642.

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Mitchell Franklin and the United States Constitution

Philip Moran

Mitchell Franklin completed fifty years of scholarship in law and philosophy, having written more than seventy-five major articles since 1932. In spite of his international prominence as a legal scholar, there has not yet been an in-depth study of his work. The difficulty of such an enterprise is due in part to his highly original approach to Roman law, the French Encyclopedist influences on American thought, and Marxist themes in law. In his work on the U.S. Constitution, Franklin has left a corpus of writings dealing with the first, fifth, eighth, ninth and fourteenth amendments, the sections of the Constitution dealing with judicial review, impeachment, the guarantee clause, and the historical influences on the framers of the Constitution. These topics by no means exhaust Franklin's scholarly contributions, but they reveal the impact of his work and the need to master the problems he raised.

The First Amendment and the Public Opinion State

The first amendment is addressed in "Infamy and Constitutional Civil Liberties,"[1] an article Franklin wrote in 1954, at a time when the status of controversial political speech was being questioned. Franklin agreed with Justice Black that the first amendment is "the keystone of the Constitution,"[2] but he held that unless its philosophical and historical background is mastered, its meaning will be misunderstood. Thus, by pointing to the Enlightenment's justification of the "preferred" status of the first amendment, he opposed the "balance" theory of rights advocated by Chief Justice Vinson, Justice Frankfurter, and Roscoe Pound, Dean of the Harvard Law School.

According to the balance doctrine, free speech is a right that must be balanced against other rights and interests, such as the interest of the state in maintaining security. For Frankfurter, free speech did not enjoy any "preferred" status over other claims. The particular type of speech at issue in the case of *Dennis vs. United States* — the right to advocate revolution — did not enjoy very much protection in comparison with other types of speech, according to Frankfurter. Vinson concurred that the "societal value of speech must, on occasion, be subordinated to other values and considerations,"[3] and Justice

1. Mitchell Franklin, "Infamy and Constitutional Civil Liberties," *Lawyers' Guild Review* vol. 14, 1954, p. 1.
2. "Dennis v. United States," *U.S. Reports*, vol. 341, 1951, p. 580.
3. *Ibid.*, p. 503.

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Jackson also supported a balance theory in holding that it was required "to reappraise, in the light of our times and conditions, constitutional doctrines devised under other circumstances to strike a balance between authority and liberty."[4]

For Franklin, the problem with the balance theory of rights was that there was no objective principle for choosing among rights. The rights of freedom and security are seen as two sides of an antinomy, each one equally valid. In order to resolve their quandary, a judge shifts from one side of the antinomy to the other as is required by circumstances. Franklin calls this vacillation or *Verstellung*. It is an idea found in virtually all of Franklin's criticisms of bourgeois legal theory, which Franklin interprets as a Kantian approach to social contradictions — an approach Hegel criticized for its expediency.[5] The "balance theory" propounded by Pound and Frankfurter involves this Kantian methodology.

Franklin notes that the balance theory of the Supreme Court derives from Pound,[6] for whom the good is what can satisfy the most demands or interests. Franklin's reply is that interests can be the product of an alienated society and hence not deserving satisfaction: "...human consciousness may have become estranged from itself, and "... there may have been a *traditio* or alienation of consciousness... Such a theory of interest must be differentiated from the interest theory of Encyclopedisme (Holbach, Helvetius) which begins with the fact of feudal alienation."[7] Since Pound does not begin with concrete historical interests, which are interrelated and hierarchical, the result is that the jurist is free to choose arbitrarily among them.

Furthermore, according to Franklin, the Supreme Court has weakened Pound's balance theory by pitting a public interest against a private one. Such a formulation pre-weights interests in favor of "public interests" such as national security and against "private interests" such as free speech.[8]

In *Dennis*,[9] Frankfurter erects an antinomy so as to balance freedom of speech and national security, both valid interests. The issue was whether the Smith Act, which penalized advocacy of revolution, violated the First amendment. Frankfurter argues that each interest is equally compelling. He writes: *"On the one hand* is the interest in security. The Communist Party was not designed by these defendants as an ordinary political party ... *On the other hand* is the interest in free speech. The right to exert all governmental powers in aid of maintaining our institutions and resisting their physical overthrow does not

4. *Ibid.*, p. 561.
5. Georg W.F. Hegel, *Science of Logic*, trans. A.V. Miller, (New York: Humanities Press, 1969), p. 738
6. Mitchell Franklin, "Interposition Interposed: II," *Law in Tradition*, vol. 21, 1961, p. 110.
7. Mitchell Franklin, "Aspects of the History of Theory of Alienated Consciousness," *Philosophy and Phenomenological Research*, vol. 20, 1959, p. 37.
8. Franklin, "Interposition...," *op. cit.*, pp. 110-111.
9. "Dennis v. United States," *op. cit.*, p. 494.

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include intolerance of opinions and speech that cannot do harm although opposed and perhaps alien to dominant, traditional opinion."[10] The result is a "paradox." Frankfurter refuses to put himself in the position of deciding directly which interest is to prevail. Instead, he invokes the doctrine of judicial restraint, and leaves it to the legislature to determine whether "the danger created by advocacy of overthrow justifies the ensuing restriction of freedom of speech."[11]

Frankfurter shows no awareness of the Enlightenment thought which gave priority to the First Amendment as guaranteeing the rule of public opinion. The Smith Act undermines the first amendment by establishing an official political philosophy — an anti-communist and anti-revolutionary ideology. In establishing such an official ideology, the inalienable rights doctrine (embodied in Enlightenment social contract) is overcome by a balance of interests. Frankfurter abandons the concept of certain rights being inalienable and levels all rights to the same balancing or weighing of interests.

The first amendment deserves priority over other rights, according to Franklin, because of the underlying principle of the American republic: the rule of unalienated public opinion. Democratic theory owes much to the French Enlightenment. D'Holbach, Helvetius, and Diderot held that medieval prejudice and backwardness were overcome through education. Rational public opinion was set against feudal obscurantism. The Jeffersonian tradition added the idea that each citizen, and not some enlightened elite, would be both the educator and the educated person.

For Franklin, the first amendment protected self-education and public education. The rule of public opinion entails an on-going dialogue and debate with the public and not the substitution of one opinion for all of society.[12] Despite his deep interest in the Jeffersonian opposition to the Alien and Sedition Acts, Franklin does not utilize in defense of his opinion Madison's *Virginia Report of 1799-1800*, which explained the Virginia Legislature's condemna-

10. *Ibid.*, pp. 546-548 (Emphasis added).

11. *Ibid.*, p. 550.

12. As Franklin says of the McCarthy period: "Once it is grasped that the First Amendment has introduced the Public Opinion state, the state based on the hegemony of public opinion, it becomes clear that the effect of contemporary American congressional or presidential mass infamy is to attack and to weaken the Public Opinion State by intimidating and silencing the public opinion which should govern American public life. Because Communism has been infamed by the state, millions of persons, almost all of them not Communists, fear being infamed as Communists, fear the consequences or effects of such infamy, and under such pressure have become mute, narcotized, hypocritical or opportunistic.

"Therefore, contemporary American infamy, infamy by executive or congressional activity, may be said to have the aim of alienating or estranging the American people from making and declaring American opinion. A false opinion, the opinion of the infamers, is thereby substituted for the opinion of the people whose rational opinion is supposed to govern American public life under the First Amendment." Franklin, "Infamy...," *op. cit.*, p. 6.

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tion of the Alien and Sedition Acts. In the report, Madison argues that what separates the American from the English view of free speech is that the American view goes beyond freedom from prior restraint. "It would seem a mockery to say that no law should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made."[13] Freedom of speech, according to Madison, is the condition for all other rights. How could one campaign effectively against those in power if freedom of criticism is labeled seditious libel? The principle of the rule of public opinion is clearly stated by Madison: "The Constitution recognizes that the government may abuse its powers, and that it is the duty as well as the right of citizens to discuss, to freely examine and control them by the 'censorship of public opinion'."[14]

Franklin held that the formation of public opinion on the issue of communism and revolution in America came about not through broad discussion of this issue in the mass media by diverse groups (including communists as well as anticommunists, ordinary citizens as well as government officials), but through the domination of the public by governmental agencies and committees who intimidated the public. The anticommunist opinion dominated prior to any legitimate public discussion. Individuals who might have broadened the discussion were "infames" and thus an official ideology emerged. Franklin's commitment to a justification of free speech based on the equal right of people to participate in political life leads to an interesting question: if the first amendment is valued as a preferred right, then does the state have any right to regulate the first amendment rights of private citizens and organizations?

An absolutist interpretation, however, does *not* follow from Franklin's justification of the first amendment as a preferred right. The public right to educate and be educated does recognize the need for the regulation of the press and of organized groups who may interfere with this right through their own use of the first amendment. Citizen participation implies that the mass media is accessible, open and contains diverse points of view. Traditionally, free speech is a negative right against state interference. However, the Warren Court, whom Franklin praised for its defense of democratic rights, argued that the public does have a right to regulate organizations whose activities might well inhibit and intimidate others from exercising their first amendment rights. Thus, an absolutist view of the first amendment is not needed to justify the primacy of the first amendment.

When the state of Alabama wished to regulate the NAACP by insisting that their members register with the state, the United States Supreme Court pointed out that it was impermissible for Alabama to compel NAACP members to register even though it was permissible in 1928 for New York State to compel Ku Klux Klan members to register. The decision distinguished the treatment

13. James Madison, *The Virginia Report of 1799-1800*, (New York: Da Capo Press, 1970), p. 220.
14. *Ibid.*, p. 225.

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of the two organizations on the basis of the history of their activities. It was legitimate to single out the Ku Klux Klan because the Court noted: "The decision was based on the particular character of the Klan's activities, involving acts of unlawful intimidation and violence, which the Court assumed was before the state legislature when it enacted the statute, and of which the Court itself took judicial notice."[15] In *Bryant v. Zimmerman*, the 1928 case concerning the regulation by New York state of the Ku Klux Klan, the Court specified that the Ku Klux Klan, unlike other organizations, uses the secrecy of its membership to conceal "acts and conduct inimical to personal rights and public welfare."[16] Furthermore, the Court characterized the Ku Klux Klan as an organization whose activities damage the public interest.

The corporate control of newspapers represents a serious obstacle to a democratic formation of public opinion. The courts often assume that there are enough publishers to get all ideas disseminated. But in the case *Amalgamated Clothing Workers v. Chicago Tribune Company*,[17] the union wished to publish an editorial ad criticizing the Marshall Field's Company for carrying imported clothing produced by cheap foreign labor. The ad was rejected by the city's four newspapers. As Barron has indicated: "Dailies in communities without newspaper competition often support one political candidate and ignore his opponents. Neither is it unusual for a newspaper to assume unlimited discretion over what it chooses to print."[18]

If participation in political life is the main justification for freedoms of speech and press, a right to access is clear. Paradoxically, regulation may be necessary to make the press more open and accessible and more representative of the diversity of public opinion, as the Supreme Court has suggested.[19]

The Problem of Alienation and Democracy

Franklin analyzed the Marxist theory of alienation (*Entfremdung*) and distinguished it from the existentialist notion of alienation as distance (*Entfernung*).[20] In idealistic conceptions of alienation, flight or separation replaces appropria-

15. "NAACP v. Alabama," *U.S. Reports*, vol. 357, 1958, p. 465.

16. "Bryant v. Zimmerman," *U.S. Reports*, vol. 278, 1928, p. 75.

17. "Amalgamated Clothing Workers v. Chicago Tribune Company," *Federal Supplement*, vol. 307, 1969, p. 422.

18. Jerome Barron, *Freedom of the Press for Whom*, (Bloomington: Indiana University Press, 1973), p. 3.

19. See "Rosenbloom v. Metromedia," *U.S. Reports*, vol. 403, 1971, p. 29.

20. Franklin writes: "The idea of alienation, as here used, is directly opposed to the conception of alienation as it is employed by contemporary idealism and idealistic existentialism. By alienation, these latter understood a falling away, a separation, an estrangement from society and from the world. However, alienation, as understood in the eighteenth century, connoted the idea of appropriation, of seizure. Alienation was a juridical idea including both the idea of willed alienation or transfer or *traditio*, such as is involved in a legal transaction, and the idea of seizure without the will of the deprived..." Cf. Franklin, "Interposition Interposed," *op. cit.*, p. 78.

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tion without consent or seizure and alienation is viewed as a human condition rather than as a historically determined social relation. In existentialism, alienation is a subjective or psychological state.

For Franklin, private property always rests on appropriation with or without the semblance of consent. In seizure, things become the property of those who seize or occupy them. Possession produces ownership without consent. Pound compared the Roman Law Theory of occupation to Savigny's aphorism that all property is in adverse possession ripened by prescription. Franklin adds: "In adverse possession of Anglo-American common law, the acquisition of the property of another is gained by holding it for a certain period of time against the will of the original owner."[21]

Franklin holds that "the infrastructure of the legal order is founded in appropriative alienation,"[22] and that " appropriative alienation is prominent in all bourgeois law because it reflects in the legal superstructure the seizure of surplus value in the productive process."[23] Since contracting parties enter into an agreement from differing positions of economic strength, Marx described the exchange between capitalist and laborer as coercive. Though there are mutual benefits from the exchange and there is a semblance of consent, the capitalist's advantage lies in ownership of the means of production.

In contemporary capitalism, the law's "reasonable person" interpretation of contracts disregards the interests of the contracting parties and focuses on language or external behavior to determine the meaning of the contract. Thus, a contract can be interpreted legally in a way neither party intended. Franklin writes that the state, through the judiciary system, can be "the unwilled party to the willed contract," in the event of a discrepancy between the intent and the external or manifested will: "Contract is the most important area of law in which the human will, expressed through promise, is given effect in order to realize the will ... Nevertheless, what is today given legal effect is not necessarily the real will, the will mentioned in political theory, but what seems to be the real will. It is the languaged or manifested appropriated will and not the real will of the self which may become decisive if there is a discrepancy between the external and the internal will or between the external will and the indeterminate or contentless internal will."[24]

Justice Frankfurter perceived this contradiction between the political and legal theory of the will in contemporary contract law,[25] and in *Hess v. Pawloski*,

21. Franklin, "Aspects of the History of Theory of Alienated ..." *op. cit.*, p. 33.
22. Mitchell Franklin, "The Mandarinism of Phenomenological Philosophy of Law," *Phenomenology and the Social Sciences*, ed. Maurice Natanson, (Evanston: Northwestern University Press, 1973, vol. 2, p. 470.
23. Mitchell Franklin, "Sketch of an Historical Foundation for a Tribunitial Theory of Conflict of Laws," *Tulane Law Review*, vol. 41, 1967, p. 593.
24. Mitchell Franklin, "On Hegel's Theory of Alienation and Its Historic Force," *Revolutionary World*, vol. 9, 1974, p. 30.
25. "Olberding v. Illinois Central Rye Co.," *U.S. Reports*, vol. 346, 1953, p. 338.

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it was ruled that the defendant had consented to be ruled by the laws of Massachusetts by voluntarily driving into Massachusetts. Frankfurter argued that this was merely the semblance of consent, or what Franklin would call an instance of appropriative alienation. But Frankfurter is sensitive to appropriative alienation only in particular cases. As Franklin put it: "Evidently, Justice Frankfurter did not realize that he could not resent the alienation in the Hess case without also criticizing appropriative alienation in all its manifestations in bourgeois law."[26] Thus, Franklin concludes that all private property rests on appropriative alienation — i.e., on acquisition which does not involve the real consent of those who permit the seizure of wealth. Since the right to private property means essentially the right to exclude others from access, this right is protected by the state. In protecting private property rights, the state provides the legal framework for alienation: "The essence of private property is its exclusiveness. And as the bourgeois state guarantees this exclusiveness, it seems to me that the worker who works for wages and the worker who is excluded from work, for instance, for racial reasons, have both been appropriated by the bourgeois state."[27]

Infamy and the Fifth Amendment

For Franklin American democracy negated feudal infamy. The medieval legal codes, such as *Las Siete Partidas*, legitimized the infaming of certain groups of people. As a legal category infamy signifies the dishonor, disgrace, or excommunication that occur as a result of the condemnation of the infamed by public opinion. As Livingston writes concerning *Las Siete Partidas*: "It is called in the Spanish law, *Enfamamiento*; and, from its definition, is a species of dishonour attached to persons, as well from their birth or course of life, as from having incurred the animadversion of the magistrates, without being convicted or even accused of any offence; as from the condemnation for an infamous crime ... The following law confounds in the same indiscriminate class of infamy, procurers, comedians, mountebanks, usurers, recreant knights, foresworn promise-breakers, gamblers, and buffoons."[28] Thus, in the United States in the 1950s it was perceived by the liberal Warren Court that loss of citizenship in the *Trop v. Dulles* case represented maximum infamy or the loss of the "right to have rights."[29] The Constitution provides substantive (e.g., the first amendment) and procedural limits (e.g., the fifth amendment) on infamy. It forbids mass infamy insofar as it bans bills of attainder. The procedural limitation is designed to limit infamy to criminal conviction. Furthermore, the exceptions to the limits on infamy in the U.S. Constitution involve high offi-

26. Franklin, "Sketch of an Historical Foundation...," *op. cit.*, p. 595.

27. Mitchell Franklin, "The Contribution of Hegel, Beccaria, Holbach and Livingston to General Theory of Criminal Responsibility," *Philosophical Perspectives on Punishment*, ed. Madden, Handy and Farber (Springfield: C.C. Thomas, 1968) p. 141.

28. Edward Livingston, *A System of Penal Law for the State of Louisiana*, (Philadelphia: J. Kay, 1833), p. 63.

29. "Trop v. Dulles," *U.S. Reports*, vol. 356, 1958, p. 102.

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cials — the impeachment of the executive, for example, or the penalties imposed on former Confederate officials contained in the fourteenth amendment.

Franklin's writing about the fifth amendment restrictions on the infaming of persons by the state has attracted the attention of the Supreme Court[30] and of fifth amendment scholars. Thus, in *Origins of the Fifth Amendment*, Levy argues that the fifth amendment does protect against self-infamy and strengthens Franklin's idea with examples from the history of English law.[31] Levy concedes that the framers of the fifth amendment might not have intended to exclude self-infamy: "Whether the framers of the Fifth Amendment intended it to be fully co-extensive with the common law cannot be proved — or disproved."[32] Though Levy supports the main thrust of Franklin's view of the fifth amendment — that it condemns infamy — he rejects Franklin's suggestion that the fifth amendment reflects Romanist or French Encyclopedist thought. According to Levy, Franklin only "proved that Jefferson read Beccaria and then assumes that Jefferson had an influence in the framing of the fifth amendment, though he had none."[33]

Franklin, however, maintains that infamy was a weak category in English common law, and that to seize the anti-infamy aspect of the fifth amendment, it is still necessary to evaluate the impact of French Encyclopedist thought. Levy admits that "the Courts have always assumed that the meaning of the

30. In Ullmann v. United States, Justice Douglas condemned the compulsion of testimony from a defendant who was given immunity from criminal prosecution. The question arose whether a person was protected not only from self-incrimination, but also from self-infamy. It was argued that one might suffer punishment in the form of a loss of honor from the hostility of public opinion directed against the person as a result of his testimony, even though no criminal charges were brought against the person. Douglas wrote in his dissent in Ullmann: "The Fifth Amendment was designed to protect the accused against infamy as well as against prosecution. A recent analysis by Professor Mitchell Franklin of Tulane illuminates the point ... He shows how the Italian jurist, Beccaria, and his French and English followers, influenced American thought in the critical years following our Revolution."

Later, the Court in NAACP v. Alabama condemned the harassment or infamy suffered by NAACP members as a result of the state compelling registration. Such infamy undermined the right of the organization to freely associate. However, in Ullmann, the Court ultimately ruled that the fifth amendment does not protect against infamy.

31. Levy describes the principle embodied in the third clause of the fifth amendment: "If one's disclosure could make him vulnerable to legal peril, he could invoke his right to silence. He might even do so if his answers revealed infamy or disgrace yet could not be used against him in a subsequent prosecution. The law of Virginia at this time as in England, shielded witnesses against mere exposure to public obloquy. The right against self-incrimination incorporated a protection against self-infamy." Leonard Levy, *Origins of the Fifth Amendment,* 1968, p. 406.

32. *Ibid.*, p. 429.

33. *Ibid.*, p. 515.

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Constitutional Clause is determined by the common law," but he is forced to concede that the fifth amendment's protection against self-infamy "fell into disuse."[34] If the idea of protection against self-infamy was firmly embedded in the English common law as Levy maintains, then it is unclear how the Courts would have failed to appreciate the anti-infamy aspects of the fifth amendment. Franklin's view that the Courts have not mastered the French Enlightenment context of the fifth amendment offers an explanation. "What has happened in America is that the pages expressing the thought of Encyclopedisme have been mutilated or brusquely torn from the books of contemporary American ideology."[35]

Madison became acquainted with the *Encyclopedia* as a result of Jefferson's being in France. As Koch writes: "Through the friendship of Jefferson, Madison deliberately procured for himself ... the social philosophy of the Enlightenment, including the Baconian-inspired thirty-seven volume set of the Encyclopedie, the Summa of eighteenth century knowledge."[36] It is also noteworthy that the fifth amendment was based on state constitutions, especially the Massachusetts Constitution of 1781. John Adams, who was familiar with Beccaria's work, helped shape the Massachusetts Constitution. Thus, Franklin wrote: "The course of the reception may be said to proceed from Beccaria to John Adams, into the constitution of Massachusetts and thence into the Fifth Amendment."[37]

The French Encyclopedists linked infamy and public opinion and the Enlightenment in general sought to protect public opinion.[38] The linking of public opinion to infamy is different from requiring that the private right of the individual be free from governmental restrictions. Even though Justice Douglas acknowledges the social interest in freedom from infamy, he relegates the right to the sphere of privacy. Franklin fears that free speech as a requirement for the formation of public opinion becomes only the right of the private individual to be immersed in the private as opposed to public life: "This so-called right of privacy or of plenary self-monadization is supposedly juridically justified by the bill of rights or first eight or ten amendments of the Constitution. However, this conception of the Bill of Rights is a new bourgeois trap,

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34. *Ibid.*, p. 429.

35. Mitchell Franklin, "The Encyclopediste Origin and Meaning of the Fifth Amendment," *Lawyers Guild Review*, vol. 15, 1955, p. 59.

36. James Madison, *Notes of Debates in the Federal Convention of 1787*, A. Koch, ed., (Athens, Ohio: Ohio University Press, 1966), p. xiv.

37. Franklin, "The Contribution of Hegel ...," *op. cit.*, p. 98.

38. Thus, Fichte writes: "Each one has the right to demand that he shall not be proclaimed infamous without legal conviction ... The right to a good name is, therefore, simply the right not to be falsely proclaimed infamous. It is a mere negative right. The state has guaranteed it by agreeing not to interfere with public opinion." Cited in Mitchell Franklin, "Laws, Morals and Social Life," *Tulane Law Review*, vol. 31, 1957, p. 477.

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because the bill of rights or the second constitution, as this writer believes it should be called, guarantees not merely the right of private life, but the right of public life."[39]

The Death Penalty, the American Enlightenment and the Eighth Amendment

Livingston was one of the leading American opponents of the death penalty, and also one of the three leading civil jurists in the nineteenth century in the United States (along with Moreau-Lislet and Christian Roselius). He was the author of several proposed codes for Louisiana, including a Penal Code. Franklin acknowledged Livingston's political, philosophical and legal accomplishments, but took exception to his views concerning the nature of infamy and the death penalty.[40] Franklin's account of infamy gives rise to a powerful argument against the constitutionality of the death penalty. The argument hinges on seeing various severe punishments in their historical relation to the concept of infamy in Roman law.

Accompanying his proposed Louisiana code, Livingston provided arguments against the death penalty drawn from social contract theory. Livingston's reasoning, following Beccaria's, charged that no one would voluntarily enter into an agreement in which one of the consequences might include his own death at the hands of the state. The social contract conception of Locke, Jefferson, and Blackstone, presupposes equality between people and the reciprocity of rights and duties. But Locke, who believed in the right to life, favored the death penalty. The explanation for this apparent paradox is that for Locke the right to life is not an absolute right. To ensure the right to life for everyone, the right has to be limited or conditional, i.e., the right to life is guaranteed provided that one does not harm the lives of others. Thus in answer to Livingston's question of why one would enter into such a contract with the state the response reads: "I enter into an agreement which might include my own death as a consequence because I know that everyone else is entering into the same agreement, which overall enhances my right to life by inhibiting others from taking away mine."

Franklin, however, starts with the Romanist tradition that certain crimes and punishments are infamous. Infamy results from the hostile force of public opinion and entails the diminishing of the person because his status as a person depends upon having social relations with others. Infamy severs a person's social relations. Social practice and opinion historically determines what crimes are infamous. Although there are variations in what constitutes an infamous crime, Roman law specified various degrees of infamy in the categories of *capitis deminutio*. The Spanish medieval code, *Las Siete Partidas*, de-

39. Mitchell Franklin, "Concerning the Dialectic of Romanist Tribunitial Intercessio During a Period of Social Ambiguity and Social Irony," *Revolutionary World*, vol. 14, 1978, p. 65.

40. Mitchell Franklin, "Concerning the Historic Importance of Edward Livingston," *Tulane Law Review*, vol. 11, p. 163.

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scribed the classes of criminals falling under infamy. The death penalty has historically figured as an infamous punishment. For Livingston, however, the infamy of a punishment such as the death penalty is made to depend on how the victim-criminal views the punishment. "It is not death, then, that is feared; it is death with ignominy."[41] Livingston then cites examples of criminals sentenced to death who have no fear of shame or disgrace, and who laugh at their fate.

Livingston's argument gives primacy to the subject's perception of the penalty. For Franklin, the perception of the condemned person does not determine whether the punishment is infamous or not. On the contrary, public opinion as a whole is decisive. It does not take the fantasies of a victim of the death penalty as the basis for determining whether his or her crime and punishment are infamous.

Franklin does approve of Livingston's statement that "everywhere, with but few exceptions, the interest of the many has, from the earliest ages, been sacrificed to the power of the few. Everywhere penal laws have been framed to support this power ..." This historical judgment condemning penal law of the past is also a condemnation of the death penalty. And it is on this historical ground that Franklin sides with Livingston in opposing the death penalty. In his discussion of the Warren Majority in 1974, Franklin argues that the state has taken on terroristic means to preserve private appropriation of surplus value. The means of terror include the arbitrary use of the death penalty. According to Franklin, such arbitrariness is the essence of state terror.

The argument that the death penalty is unconstitutional can be derived from Franklin's notion that the Constitution fetters or limits infamy, as is evident in the eighth amendment. The Warren Court held that the stripping away of citizenship was a violation of the eighth amendment. The loss of citizenship constituted the loss of the "right to have rights."[42] A state-less person cannot call on the government to guarantee the enforcement of his rights. Historically, the loss of citizenship has been recognized as an infamous punishment, as in Roman law, where it signifies *capitis deminutio media*. Thus, if the eighth amendment excludes this degree of infamy, why would it not also exclude the death penalty? The ultimate loss of civil being is death.

The Romanist Methodological Meaning of the Ninth Amendment

Franklin interprets the ninth amendment as dealing with legal method. The ninth amendment reads: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Franklin considers the ninth amendment a use of the method of analogy in Roman law. The Supreme Court used the method of analogy justified by

41. Edward Livingston, *The Argument of Edward Livingston Against Capital Punishment*, (New York: N.Y. State Society for the Abolition of Capital Punishment, 1847), p. 8.
42. "Trop v. Dulles," *op. cit.*, p. 102.

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the ninth amendment in *Griswold v. Connecticut*.[43] But, it is unclear that Justice Douglas fully grasped the method because he did not discuss, in writing the opinion for the Court in this case, its historical justifications and applications. Franklin provides the Court with a theoretical framework for these kinds of decisions.

For Franklin the democratic potential of the ninth amendment is that legislation rather than prior decisions serves as the basis for further legal development. Insofar as legislatures are more representative bodies than the judiciary, legislation is more likely to have a relation to the popular will than judicial decisions. Consequently, the development of new legal principles, such as the right to privacy proclaimed in *Griswold v. Connecticut*, has a democratic character insofar as it is analogous to rights embodied in legislation adopted by elected representatives. Analogy makes the judge's decision subordinate to legislation rather than prior decisions.

Franklin opposes the interpretation of Pound and others that the ninth amendment represents a "natural law with a variable content." The evidence in the text of the ninth amendment supporting Franklin's interpretation is that the word "construed" is employed in the ninth and not in the tenth amendment. This is obviously a reference addressed to those who are interpreters of the Constitution. The ninth amendment refers to future situations and development of the Constitution.

But natural theory acknowledges the existence of some higher or superior law existing outside or independently of human values, norms and ideals that have arisen historically, thus masking the judge's arbitrary interpretations. Natural law's variable content lends itself to the subjectivity of the interpreter. When no basis can be found to justify a decision, then one appeals to plastic natural law as a justification.[44]

Franklin, on the other hand, views the ninth amendment as a dialectical solution to the problem of how to negate or extend the Constitution, while preserving existing rights. Here he emphasizes Romanist method: "In his opinion in *Griswold v. Connecticut*, Justice Goldberg points out that Madison was responsible for the ninth amendment. It may be added that in 1788 Madison wrote to Jefferson, who was still in Paris, that the projected bill of rights, which Jefferson demanded as prerequisite for accepting the First or Philadelphia Constitution of 1787, was defective insofar as it was particularistic or was

43. "Griswold v. Connecticut," op. cit., p. 479.

44. The great nineteenth century Southern jurist, Christian Roselius, writes: "They attempt to justify their resistance to that law on the ground that its enactments are contrary to what they are pleased to style an anterior or a higher law of paramount obligation, by which they mean, I presume, the natural law. The absurdity of such a position must strike the mind of every reflecting person at once. Let me ask what would become of government, nay, of society itself, if every individual could interpose his own crude notions of natural right between the law of the land and its execution?" Quoted in Mitchell Franklin, "The Introductory Lecture of Christian Roselius," *Tulane Law Review*, vol. 32, 1958, p. 576.

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lacking in the requisite latitude. In his response in 1789, Jefferson said that "Half a loaf was better than no bread." However, by introducing the ninth amendment, Madison legitimated analogical development of the text of the first eight amendments, thus supplying the Romanist methodological yeast which would enlarge Jefferson's half a loaf to a full loaf."[45]

The method of analogy requires that whatever new principles or conclusions are established, they must be consistent or analogous with existing texts, i.e., the Constitution may be extended by arriving at principles justifying conclusions which are implicit in individual texts of the Constitution or even in general texts grouped together.

Franklin indicates that the Romanist method of analogy presupposes the existence of flexible texts, "abstract universals" that can be deepened and developed. This is what Pound refers to as standards, such as that of due process. This Romanist flexible legislation is contrary to English law.[46]

Singular laws or texts in the Constitution cannot be developed by analogy. For example, the third section of the fourteenth amendment, which singles out Confederate officials, is a text concerning a historical exception to the Constitution's general limits on infaming of citizens. At times, "strict constructionists" of the Constitution have argued to deny Constitutional interpretations that are not particularistic. For example, the segregationists in the 1950s opposed the decision in *Brown v. Topeka Board of Education* on the grounds that the fourteenth amendment does not mention education.[47] The fourteenth amendment, however, contains standards such as "equal protection of the laws" whose application to social life is not delimited. It is the historical role of such standards to allow the jurist to confront new situations. Furthermore, as Franklin notes, it is inconsistent of the segregationists to oppose the application of the fourteenth amendment to education and not to oppose other standards in the Constitution.[48]

In his opinion for the Court in *Griswold v. Connecticut*, Justice Douglas employed the method of analogy when he stated that several texts of the Constitution justified a right of privacy, i.e., the right of privacy is implicit in the first, third, fourth and fifth amendments. What is implicit in them taken together can be projected so as to derive a general principle not stated in any of these amendments. Douglas concludes: "The foregoing cases suggest that specific

45. Franklin, "The Ninth Amendment...," *op. cit.*, p. 499.

46. Franklin writes: "In English law every statute is taken in the singular. It is unnecessary for the law-maker to indicate that his text is singular, for projection of the legislation never will seem permissible to the British jurist. On the contrary the English law-maker is satisfied merely to exhort the judge to genuine interpretation." Cf. Mitchell Franklin, "Equity in Louisiana: The Role of Article 21," *Tulane Law Review*, vol. 9, 1935, p. 501.

47. "Brown v. Board of Education of Topeka," *U.S. Reports*, vol. 349, 1955, p. 294.

48. Mitchell Franklin, "The Relation of the Fifth, Ninth, and Fourteenth Amendments to the Third Constitution," *Howard Law Journal*, vol. 4, 1958, p. 179.

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guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[49]

Franklin follows a long tradition of radical criticism of the doctrine of judicial supremacy dating back to Locke's time. Locke wrote that nothing should stand between the people and the legislature. Within the doctrine of the separation of powers, the legislative branch was considered the more democratic and superior governmental body. Jefferson took the position that the unelected and conservative Court was not the ultimate interpreter of the Constitution. He considered the executive and legislative branches free to interpret the Constitution in their own way apart from the judiciary. In his classic study of the history of the doctrine of judicial supremacy, Boudin showed that this view was typical when the Constitution was written.[50]

Radical political and legal scholars in the twentieth century have criticized the judiciary as an undemocratic institution. Even in his praise for the Warren majority of the Court — the only time Franklin defended the Supreme Court — Franklin emphasized that the Warren majority took the side of the corporate trust in its decisions.[51]

While Franklin attacks the doctrine of judicial supremacy, he neither agrees with the idea that the legislature is the genuine representative of the people nor with the idea that the Court should restrict itself to a narrow interpretation of Constitutional rights. For Franklin, unalienated public opinion is the only ultimately legitimate source of political rule. The legislative branch may be more likely to reflect the will of the people, but it too can be manipulated by particular interests.

Franklin attacks the idea of the strict constructionist view defended by conservatives such as Frankfurter and the present Attorney General. The judicial method of deciding cases according to precedent (*stare decisis*) is a tool for justifying outmoded social relations. And when the judge at times abandons prior decisions in confronting new legal situations, "he does so from a weak base, because the division of social labor of which he is part does not permit him to grasp directly, accurately, and completely the many-sidedness of unending social development, its relations with the litigation at hand."[52] The method of analogy favored by Franklin imposes a responsibility on the jurist to expand and develop the Constitution in a way that is consistent with the flexible legislated texts of the Constitution rather than with prior Court decisions. Legislation rather than cases becomes the prime source of legal development. In this

49. "Griswold v. Connecticut," *op. cit.*, p. 484.

50. Louis Boudin, *Government by Judiciary*, (New York: Godwin, 1932).

51. Mitchell Franklin, "Contribution to an Explication of the Activity of the Warren Majority of the Supreme Court," *Buffalo Law Review*, vol. 24, 1975, pp. 541-542.

52. Franklin, "Concerning the Historic Importance of Edward Livingston," *op. cit.*, p. 185.

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respect Franklin joins Justice Black in criticism of the common law method of *stare decisis*.[53]

Franklin's study of the U.S. Constitution has contributed to a fuller understanding of its political philosophical framework, the significance of specific rights embodied in the Bill of Rights, and the role of judicial method in expanding the rights grounded in the U.S. Constitution. Franklin emphasized the French and American Enlightenment within the liberal tradition. With his emphasis on freedoms as positive guarantees for the public to participate in self-government, his concern about appropriative alienation and infamy threatening the exercise of democratic rights, and his rejection of English common law method of judicial interpretation for a dialectical, Romanist view, Franklin outlined the possibility of a new development promoting a truly democratic society.

53. "Green v. United States," *U.S. Reports*, vol. 356, 1958, p. 195.

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Born in the US.A.: The Civil Law Theory of Mitchell Franklin

David Fraser

I never met Mitchell Franklin but he saved my life. When I started my legal education at Quebec's Université Laval in 1974, I was greeted by endless tedium. My professors were convinced that to be good teachers and to train our minds in the wonders of the law, they had to spend three years in boring exegetical analyses of the provisions of the Quebec *Code Civil*. None of the intellectual ferment and political excitement which was to reach its zenith with the election of the Parti Quebecois government in 1976 was permitted to enter the *Faculté de Droit*. Apolitical analysis of texts was then, and is still today, the norm.[1] We were bored to death. Quebec and Louisiana are alone in Canada and in the U.S. in having a legal system based on the French *Code Napoleon*. This, together with other cultural and linguistic ties, means that the Quebec and Louisiana legal worlds share a certain affinity. It is thus only natural for people in one of these jurisdictions to look to the other for information and inspiration. It was by reading articles about the Louisiana civil law system that led me to Franklin's prolific bibliography. He taught that civil law could best be understood, not by exegetical readings and analyses, but in the context of a radical critique of the material bases of society.

Of course, much of Franklin's work is problematic and not always very useful to current radical legal practice. His views on the unfolding of a dialectical process within civil law are unrealistic, and he misunderstood the dynamics of a post-industrial U.S. society. But the issues he raised go to the heart of debates within the Conference on Critical Legal Studies (C.L.S.) and other attempts to develop a radical perspective in law. From the 1930's to the 1970's, Franklin raised many, if not most, of the issues which consume a disproportionate amount of C.L.S. passion these days. Franklin was describing and analyzing bourgeois legal hegemony long before C.L.S. He was involved in issues of the social construction of language[2] many years before Derrida and

1. John E.C. Brierley, "Quebec Legal Education Since 1945: Cultural Procedures and Traditional Ambiguities," in *Dalhousie Law Journal*, n. 10 (1986), p. 5.

2. For the best current C.L.S. work in this area, see James Boyle, "The Politics of Reason: Critical Legal Theory and Local Social Thought," in *University of Pennsylvania Law Review*, n.133 (1985), p. 665; and Gary Peller, "The Metaphysics of American Law," in *California Law Review*, n.73 (1985), p. 1151.

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Foucault became compulsory footnotes in C.L.S. law review articles. For this alone, his work deserves considerable attention. Franklin, however, remains the forgotten man of American legal theory. As a legal historian, Franklin had few intellectual equals, yet C.L.S. work in this field ignores him.[3] If this self-identified American legal Left ignores him, it should come as no surprise that mainstream legal thinkers, even in Louisiana, pass over him with equal disregard.

In the West there are two great legal systems. One, the common law, comes from Britain and has been propagated through the auspices of British and, later, American imperialism. It is the primary legal system of the English-speaking world. The second, the civil law, traces its roots to the legal system of imperial Rome. It finds its most significant modern source in the law-making process of codification which followed the French Revolution and resulted in the French *Code Napoleon*. This civil law spread rapidly throughout Europe and its colonies both as a result of French, especially Napoleonic, empire-building, and because the codification of law was seen as the necessary result of Enlightenment rationalism.[4]

Grosso modo, the common law is a system of legal rules developed over centuries from universal principles which can be extracted from cases decided by courts of justice in common law countries. It is a judge-made law. The rules are not formally systematized, nor are they, as such, written down. Each case is decided by transposing legal principles from previous decisions to the facts of the case in question. Its basic approach is inductive reasoning, moving from particular cases to general principles.

Civil law, on the other hand, is legislative law. It regulates civil society by the intervention of an enlightened legislature. Civil law jurisdictions have their primary text, the Civil Code, whose epigrammatic provisions regulate all transactions in civil society.[5] Each case is decided by courts, not with reference to judge-made rules, but by applying the provisions of the Code to the facts of

3. See Morton Horwitz, *The Transformation of American Law 1780- 1860*, (Harvard University Press: Cambridge, 1977); and Mark Tushnet, *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest*, (Princeton University Press: Princeton, 1981). Even those left scholars who seek to return to Hegelian roots continue to ignore Franklin's essential contributions in this field. See e.g., Dru Cornell, "Taking Hegel Seriously: Reflections on *Beyond Objectionism and Relativism*," in *Cardozo Law Review*, n.7 (1985), p.139 for a detailed study with no reference to Franklin.

4. For its defenders, the Code is the epitome of the Enlightenment and offers "a one volume blueprint of society." See Shael Herman, David Combe and Thomas Carbonneau, *The Louisiana Civil Code: A Humanistic Appraisal,* (Tulane Law School: 1981), p. 3.

5. Thus, for example, Article 21 of the Louisiana Code, which figured prominently in Franklin's work, states: "In all civil matters where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received wages where positive law is silent."

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the case. The civil lawyer basically applies deductive logic, moving from the general to the particular.

Anyone committed to rationality and the "immutability of certain ideas" would clearly prefer the Enlightenment-inspired, deductive reasoning process of civil law to the apparently anarchic, perfectly mutable, judicial whimsy of common law. For Franklin, who believed that "Marxian socialism...is based on absolute, Hegelian ideas,"[6] the choice was obvious. If history is a logical process, understandable by means of the dialectic, and if the material base of society is reflected in the legal superstructure, then a legal system based on reason, rather than fancy, is the only choice during the transition to socialism. The necessary conditions for this transformation are available within the system as are the contradictions which will make such a change both necessary and inevitable. A system of law based on Reason, such as codified civil law, is clearly both the epitome of bourgeois legality and the necessary form of socialist legality.[7]

The civil law tradition and Hegelian Marxism were the essential elements of Franklin's legal theory.[8] There is, however, another element which is the key to understanding Franklin and is perhaps best explained by what may appear as a digression. Franklin believed in the U.S., its system of government and the democratic potential of republican virtue.[9] His work was an attempt to develop a truly independent American legal system free of British irrationalism and its common law tradition, and to fulfill the promise of the Enlightenment-inspired rational virtue of the Bill of Rights (the Second American Constitution). This was to be achieved by spreading the influence of democratic rationality and rational democracy to the entire legal system through codification.

At the same time, Franklin was an intellectual exile. He spent much of his

6. Mitchell Franklin, "Book Review," in *Tulane Law Review*, n. 5 (1930-31), p. 156.

7. See Mitchell Franklin, "Legal Method in the Philosophies of Hegel and Savigny," in *Tulane Law Review*, n. 44 (1970), p. 766.

8. A typical formulation can be found in Franklin's discussion of the Uniform Commercial Code drafted by Karl Llewellyn: "At this point it may be emphasized that the *lex Llewellyn* represents an outstanding accomplishment of American law because of its consciousness that codification cannot proceed unless it is accepted that the history of the legal method of Anglo-American common law shows the latter to be unsuitable for a regime of systematic written legal texts; and hence that such common law legal method must be 'displaced' and replaced by legal method received from the history of the legal method of modern Roman law, which developed during many centuries of experience with codification. See Mitchell Franklin, "On the Legal Method of the Uniform Commercial Code," in *Law and Contemporary Problems*, n.161 (1951), p. 330.

9. See "The Passing of the School of Montesquieu and Its System of Separation of Powers," in *Tulane Law Review*, n. 12 (1937), p. 1; "A Study of Interpretation in the Civil Law," in *Vanderbilt Law Review*, n. 3 (1950), p. 557; "Law, Morals and Social Life," in *Tulane Law Review*, n. 31 (1957), p. 465.

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academic life at Tulane in a jurisdiction whose legal system, despite Franklin's monumental efforts, remained Other. While his intellectual colleagues were reading and analyzing cases, Franklin was reading Hegel. While they remained ensconced in the U.S., Franklin traveled and acted as the American *rapporteur* at international comparative law meetings. Finally, while his colleagues most often acted as apologists for corporate capitalism, Franklin promoted "the proletariat." Both in his participation in the National Lawyers Guild and in his legal writings, he promoted the interests of labor.

Franklin was an American and a lawyer, for whom the Bolshevik Revolution was the central event of his life. Thus, he could never be other than an intellectual exile in his own land. Three related themes dominate his work. First, Franklin saw the democratic potential in the codification of civil law. Because it is the result of legislative action rather than judicial decision-making, it is overtly the result of a democratic process. Moreover, because the law is available in textual form, it is open to the public, so that he can be criticized by citizens and, even more importantly, it can educate citizens in democracy and reason. Second, because of its legislative origins and rational character, civil law leads to a form of legal reasoning which requires judges to give concrete content to the texts of the Code. Third, because the "content" of law in the civilian tradition is based on rational analysis and extrapolation from democratic texts, the role of the judge is institutionally much more limited than that of his common law counterpart. This means that legal content is determined by a reasoned search for truth and, consequently, that judges can claim no institutional monopoly on either Truth or Reason. Thus, the civil law tradition is a university tradition, one in which learned discussion and analysis by law professors play a role in the process of truth-seeking which is *the* process of the civil law. Law professors are not only formulators of law, but educators who play a dual role in a system founded on rationality and democracy. Law professors are not only pedagogues but through political vision, *avant-garde* political leaders.

In one of his earliest works, Franklin discusses the importance of the *Restatement of Law* for the future of the U.S. legal system. It should come as little surprise that he was both enthusiastic and wary about its possible impact. While he greeted any step towards codification as a welcome one, he was fully aware of the limited nature of the American Law Institute (A.L.I.) and its inherent class biases. He was also quick to point out that the move to codification would not come about at at the behest of lawyers and judges[10] who stood to lost the most in terms of power and prestige. It could come about only as a result of the democratic pro-

10. "The Historic Function of the American Law Institute: Restatement as Transitional to Codification," in *Harvard Law Review*, n. 17 (1934), p. 1394: "A sincere impetus for codification will not come from the judges, nor from the associations of lawyers. Traditional politics, moreover, never exerted itself in this direction. Obviously then, codification may have to be the work of new political forces taking their cue from the Europe of the last fifteen years."

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cess. The fundamental democratization of law was central to Franklin's work. It also helps in understanding why his work has not, and probably will not, have much influence on current left legal scholarship in C.L.S.

First, there is Franklin's almost romantic naivete about democracy and the American legal system. Thus he writes: "The trouble is with the Anglo-American system of juridical method, the demands it makes, the material it depends on, the material it excludes, the safeguards that must be erected about it to prevent collapse. The difficulty is not so much with the inadequacy of human speech, as with a system in which private persons assert in private litigation their own claims without knowing or revealing fully the social interests which, however, stand revealed in learned discussion based on all resources, 'factual' or otherwise, available in the draughting of codes. It is not enough to say that the subject matter of law is social interests. The adjustment of these social interests must also be a socialized process, and not left to the mercy of the individualism of mere judicial litigation. A society based on political organization and anxious to direct its own future can insist on nothing else. The correct demand is for a useful juridical method not for an attack on human speech as such."[11] Here we find Franklin both sophisticated and naive. His democratic romanticism left the "ideal" of legislative law opposed to the "practice" of judge-made law.

Yet, Franklin is dealing with neither. The American Law Institute and the *Uniform Commercial Code* are not the product of an idealized democratic legislature nor are they the product of democratic labor factions. They are the product of lawyers and of their interests. Legislatures which codify "the social context" codify a specific, historical social context with all its class, gender and racial oppressions. Law professors do not find neutral facts but find a social context which has constructed and which will continue to construct "the facts." None of this has anything to do with ideal democracy or with objective reason. In a sense, this is precisely Franklin's point. His commitment to Marxist principles led him to see clearly the nature of oppression in the U.S. Yet, much of Franklin's work concerning the civil law system has a romantic flavor. On the one hand, Franklin can be seen as an intellectual dedicated to historical materialism. On the other hand, much of his work resonates with a romantic ontology, the basis of which remains hidden.

Franklin's entire view of the democractic nature of codification is opposed to the individualism of common law adjudication. But he misunderstands the common law adjudicatory process to such an extent that it is fatal to his "civil law as democracy" thesis. While the central paradigmatic feature of the common law system is that of the individual plaintiff bringing a suit before a single judge for adjudication against another single individual defendant, this does not mean that, as Franklin clearly believes, this is other than a "social" process. Though he clearly understood the relation between capitalism and law,

11. *Ibid.*, p. 1312.

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he divorced this understanding from his analysis of the common law system.[12] Franklin's analysis ignores both the material and ideological reality of the common law system.

The commodity-form theory of law, most associated with the Soviet jurist Pashukanis, holds that commodity exchange typifies the form and substance of the bourgeois legal order.[13] The image of the isolated monad, entering into a contract for the sale/purchase of a commodity with another isolated monad, is the purest legal transaction of capitalism and informs the entire legal system. From a Marxist viewpoint, the problems of commodity production and exchange are central to the capitalist system. Franklin's critique of common law, therefore, is a critique of capitalism. But this situation is not unique to common law. For all its socialized content and its democratic legislative character, the Civil Code is also the epitome of legal, monadic relations within civil society.[14] Franklin wants to differentiate between the decadent actuality of common law and the democratized/socialized reality of civil law. However, each is a system of capitalist law and each must, given Franklin's Marxism, be the superstructural reflection of that base.

The analysis of reification is dependent on commodity production and exchange. The abstraction of labor as a commodity, i.e., a reified entity, effects the entire system of capitalist production, accumulation and exchange. Workers become separated, fragmented and appear as things. In modern capitalism, law is the epitome of this fragmentation.[15] Legal relations are superstructural, manifestations of the *real* incoherence in the material base. Alienation masquerades as the whole. The legal system of common law treats this problem through judicial adjudication on individual cases by its appeal to certain *immutable principles*, which constitute common law and which are known to the actors in the communicative process we call a trial. Civil law achieves a similar result by reference to immutable principles found in the ideological Code. In each case, however, Law serves to mask a fragmentary reified world.

The "critique of reality" of Franklin's argument for the superiority of the

12. See especially his complex discussion of the forces leading to codification in Louisiana: "The Place of Thomas Jefferson in the Expulsion of Spanish Medieval Law From Louisiana," in *Tulane Law Review*, n. 16 (1942), p. 319 and "The Eighteenth Brumaire in Louisiana: Talley and the Spanish Medieval Legal System of 1906," in *Tulane Law Review*, n. 16 (1942), p. 514.

13. See Eugene Pashukanis, *Law and Marxism: A General Theory*, Chris Arthur ed., (Ink Links: London, 1978).

14. In his other works on codification, Franklin was perfectly clear in his understanding of this point. See "Alienation and Hegel's Justification for Codification," in *Tulane Law Review*, n.33 (1958), p. 133.

15. See Peter Gabel "Reification in Legal Reasoning," in *Research in Law and Sociology*, n. 3 (1980), p. 25; and "The Mass Psychology of the New Federalism: How the Burger Court's Political Imagery Legitimizes the Privatization of Everyday Life," in *George Washington Law Review*, n. 52 (1984), p. 1563.

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civil law tradition attacks his characterization of the nature of common law with its reliance on case-by-case adjudication. The latter rests on the "mercy of the individualism of mere judicial litigation."[16] Franklin's contention fails on at least three grounds. From a liberal legal perspective, common law adjudication relied on immutable fundamental principles (e.g., natural law), *not* just on the individual whim of litigants. Also, legislation (i.e., the will of the democratic-elected people's representatives) does play a key role even in the process of "pure" common law.[17] Second, Franklin's attack on "individualism" in common law fails to recognize that "individualism" as the primary social construct of liberal capitalism, would not surprisingly be reflected in its legal system. Perhaps, Franklin means by "individualism" the form of accepted or valid "inputs" into a particular legal decision. But it is not a convincing argument. First, for a legal system to function, all the actors (judges, lawyers and litigants in the common law) must share certain fundamental assumptions. Thus, even in common law, a certain social process has taken place beforehand, during, and especially after the trial when a decision is reached. Franklin's objections about "input" into the system could be an argument that common law "individualism" is clearly irrational while codified, socialized and democratic civil law is rational. But codification, socialization and democracy are not inherently rational concepts. On the other hand, he could be arguing that rationality is not an ordering principle *in practice* in common law whereas it is *the* ordering principle of civil law. But the dominating principle in American common law during the rise of capitalism was clearly an attempt to achieve "a rationalistic ordering of the whole legal universe."[18] Like the French bourgeoisie of the Paris Civil Code, the U.S. bourgeoisie formed the ideology of American law as a rational project.

Franklin's view could also be interpreted as holding that civil law is superior because common law excludes the legislature from the legal process and thus from the search for the truth. It also excludes legal academics from the search and thus necessarily results in an irrational legal system. Of course, Franklin then assumes that Truth and Reason dwell in law schools and legislatures and not in court rooms or law offices. He also assumes that judges, plaintiffs, defendants and their lawyers are somehow divorced from the rest of life and society to such an extent in the common law system that no "extraneous" influence could be exerted during the adjudicatory process. These assumptions are questionable.

Finally, Franklin could be arguing that these inputs and influences do exist in the common system. On this analysis, such influences are irrational and a

16. Cf. "The Historical Function of the American Law Institute," *op. cit.*, p. 1382.

17. See, e.g., Guido Calabresi, *A Common Law For the Age of Statute*, (Howard U. Press: Cambridge, 1982).

18. Duncan Kennedy, "Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America 1850-1940," in *Research in Law and Sociology*, n. 3 (1980), p. 3.

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system which grants them validity, and in many cases priority, is to be rejected. Again, there is little real evidence to justify the idea that real life and the interests of those represented in day-to-day law are any more or less rational than the ruminations of judges and law professors concerning the "meaning" of a Civil Code provision. By the limiting grammar of legal professionalism and by legal "concepts" such as relevancy, influences do enter and they do not escape notice. There is nothing inherent in the common law system, as opposed to the civil law system, which enhances or detracts from the possibility of a symbiosis between law and truth.[19]

Franklin's theory of the superiority of civil law over common law was based on a romanticized vision of civil law and a stultified view of common law. But Franklin was not stupid. He had studied common law and had practiced law in a common law jurisdiction. He knew the realities of both legal systems and was familiar with the types of critique outlined. Yet he preferred civil law. Why?

Two factors influenced Franklin's account. First, Franklin believed in the democratic and educational character of the American legal system. From Franklin's perspective, a codified legislative law is more openly democratic than the "secret" common law. Further, because of its open democratic nature, its written expository text and its foundation in Reason, civil law is a much better dialectical tool to instill the lessons of republican, socialized virtue than common law, with its inductive hidden logic. Civil law codification is founded in Reason and because Reason itself is immutable, it results in a unified system. For Franklin rather than having a system based on common-law "individualism" of various state jurisdictions, the U.S., with a Code, could achieve democracy and unity.

The second factor which leads to Franklin's attachment to the civil law system is the historical context within which he worked. Legal Realism was the dominant intellectual movement in American legal circles. Its primary tenet was the illogical and irrational character of law. Therefore no coherent set of rules could be derived from common law. For Franklin this meant that the dominant legal theory of his day had: "been telling of the futility of the use of language, of words, and of sophisticated groups of sounds called concepts."[20] For someone who began his career when Hitler was coming to power, the dangers inherent in the collapse of law were obvious. Thus, the battle-line could not have been more clearly drawn.

Taking the Legal Realists at their word, Franklin saw codification both as a protection against Facism and as a means for bringing about socialism. Since the present system denied "that language has social significance, and can be

19. Alan Freeman, "Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine," in *Minnesota Law Review*, n. 62 (1980), p. 1049.

20. "The Historical Function of the American Law Institute," *op. cit.*, p. 1367.

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depended upon as an authoritative means of intercommunication"[21] it could not lead anywhere. The bourgeoisie had historically recognized that its interests lay in codification and Reason. But now, in light of the move from industrial to finance capitalism and in the context of the Depression there were new democratic forces (the New Deal) demanding codification. Of course, this return to Reason was a return to bourgeois rationality. But Franklin thought it would inevitably "socialize" the legal system.

For Franklin, legal method and interpretation could fulfill one of two roles. "Legal method, including the process of interpretation, may maintain or deepen legality or overcome or weaken legality. In the latter case the mission of legal method may be described as paralegal, in that determinations are made by overcoming or weakening the legal force of existing law, although such determinations purport to yield the authority of the existing law."[22] This battle between law and para-law, between good and bad interpretation, between Hegelian and Neo-Kantian legal method is a constant theme in Franklin's work as was the distinction between civil law and common law. In dialectical terms, civil law would deepen legality until it unfolded inevitably into a new socialist legality. On the other hand, common law continued to operate by ideological subterfuge to prevent the contradictions of the material base from becoming evident in the legal superstructure.

This tension is manifest in Franklin's remarkable analysis of the difference between the common law concept of "equity" and the civil law *equité*, translated in Louisiana as equity. In the history of British law, the primary courts of justice administered common law. In an attempt to insure royal control over courts and in order to alleviate some of the hardships of the traditional rigidity of common law rules, the King, through the Chancellor, developed the Courts of Equity. This equity in the British system did not, technically, overrule common law, but supplemented it. For example, in a contracts dispute, common law courts could award only damages to the victorious party while equity (which, because of the ecclesiastical origins of the Office of Chancellor, operated on the conscience of the individual) could award specific performance of the contractual obligation. While in many cases equity does act merely to supplement common law, in many others it could intervene (e.g., by way of injunction) to prevent the realization of a common law right by a successful litigant. Thus, while technically allowing the common law judgement to stand, equity would effectively render it nugatory. For Franklin, this example is a classic case of disingenuous para-law: bad law which flies in the face of law as Reason. For him, if common law embodies Reason, nothing should or could stand in its way.

On the other hand, *equité*, which comes to French law from the Roman tradition, is good law for it permits Reason to be applied beyond the text to an

21. *Ibid.*, p. 1369.
22. "A Study of Interpretation in the Civil Law," *op. cit.*, p. 561.

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unforeseen circumstance yet in a manner consistent with the Reason of the Code —*par le Code Civil, mais au-dela du Code Civil*. It is "the process of deepening legality."[22] Thus, civil law, by reference to a text, allows dealing with situations unforeseen at the time of the adoption of the text, and not included in a literal reading. The text is not only reflective of positive law, but it is a source of law from which new rules can develop. Thus, civil law "recognizes potentiality within actuality, and being as becoming [and] is a tremendous resource during a period of rapid social transformation through the formulation of new texts."[23] The civil law concept of *equité* is, then, a perfect example of the Hegelian dialectic. Development by analogy is permitted as "genuine interpretation": "only if such unfolding reflects the potentialities of the actual or positive text, thus making explicit what has become historically implicit in the existing legal determination."[24] Thus, for Franklin, the law/equity split of the common law system is "bad" because the dichotomy remains. On the other hand, in the civil law system contradictions which exist can be resolved when the historical, material and ideological conditions are aligned. The civil law method of analogy or *equité* allows for historical progress.

Franklin's formulation again is not unproblematic. The law/equity dichotomy of the English common law tradition has not prevented capitalism from evolving, nor has the legal system collapsed or remained unchanged under the weight of its contradictions. Indeed, at a certain level, common law seems to thrive on its basic determinate indeterminacy.[25]

Yet, Franklin's argument about civil law interpretation is consistent with his broader views and goals. A system which is democratic and socialized will evolve publicly and openly when conditions are "right." For example, he recognizes that, improperly applied, especially in the professionalized life-world of judges, reasoning by analogy can lead to bad interpretation and a system of para-law. Thus, democratic input and the reasoned analysis of legal academics is essential to maintain the Hegelian vision of civil law against the inevitable class and fractional biases of the judiciary. Law professors thus embody the class consciousness of the proletariat.

For Franklin it is clear that laws have a socially constructed meaning arrived at through education, democracy and criticism. To accept Legal Realism would be to deny democracy and reason, and to renounce faith in the dialectic. Franklin's support for codification is not support for the abstract ideal that language has meaning and that such meaning is immutable. It is rather support for the idea that social history is evolving and that in the legal life-world codification, with the corollary ideal of interpretation by historically justified analogy, must pave the way towards socialism. Thus, from Hegel emerges: "...the thought that codification must be supported as a determination

23. *Ibid.*, p. 562.
24. *Ibid.*, p. 567.
25. See Duncan Kennedy, "Form and Substance in Private Law Adjudication," in *Harvard Law Review*, n. 89 (1976), p. 1685.

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or as a content reflecting determinate social history, even though such historical positing or historical content will be negated in social history. If actuality, the historic present, is deprived of determination, so that codification with legal content is excluded, the potentiality, the historic future, which negates, such code, also cannot yield its own determination and hence will not negate the code."[26]

The struggle for socialism was not, for Franklin, to be watched from the sidelines as history followed its inevitable path. It was a struggle in which the legal academic and the citizen had to engage in order that the dialectical relation between form and content in law and politics would reflect real historical possibilities. The content of the legal rules of the Civil Code did not depend on the abstract wording of its text, but on the social construction of meaning achieved in political struggle. Franklin was acutely aware that under Hitler the Civil Code of the Weimar Republic remained unchanged in its wording, but that the social construction of language dramatically effected its content. Where the Legal Realists gave up on language, Franklin engaged legal language as a dialectical subject, an enemy which could be turned, through the actualization of potentiality, into an ally. Thus, Franklin's commitment to the civil law system and to codification was not, in the final analysis, wholly a naive misunderstanding. It was grounded in his commitment to dialectics. Because codification permitted the concretization of real social and material conditions, and because this concretization carried with it its own contradiction, the only correct dialectical position for the legal academic to take, as a form of legal praxis, was to favor such codification.

Thus, Franklin's preference for civil law codification was a tactical choice. Why he refused to be explicit and used such obscure language is difficult to fathom. It also renders much of his "practical" analysis of little use to those who work primarily with the common law system because his treatment is often disingenuous and unrealistic. Franklin's Marxist analysis of law utilizes a simple theory of ideology and his theory of the social construction of language seems limited. He was, however, talking about issues which still figure in C.L.S. work long before there was a C.L.S. Why has he been ignored?

One reason is that, on the surface, Franklin was a civil lawyer. This is a categorization which immediately renders his work irrelevant to those trained in common law. There is a total lack of C.L.S. work dealing with civil law, so there is apparently no reason to deal with Franklin. There is also a second reason why he has been ignored. Franklin's Marxism was an orthodox Soviet version. Intellectuals and C.L.S.ers in particular have an aversion to this interpretation of Marxist theory and practice.

Franklin was committed to principles of real equality, justice and active republican/citizen virtue. He was also committed to law and the ideal of a socialist legality. Those who have a different vision must nonetheless come to grips with his trenchant, if mistaken, theory.

26. "Alienation and Hegel's Justification for Codification," *op. cit.*, p. 135.

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The points around which internal debate in C.L.S. now swirls, rationalism *vs.* irrationalism, determinacy *vs.* indeterminacy, etc. are all dealt with in Franklin's work. Most important, however, is Franklin's fervent belief in and advocacy for the democratic nature of law and legal practice. Those who wish to do battle with the C.L.S. critique of rights as disabling, alienating and "bad" politics, find a powerful ideological ally in Franklin. Those who wish to defend the rights critique must deal with Franklin's work which grounds law in democracy. The two principles which Franklin's work was meant to connect must be detached. Law and democracy as ideological sites of struggle remain the central concern of C.L.S. scholars. Franklin's work has linked them with a powerful intellectual mortar. The solidification of the edifice, however, must begin at the foundation. In the U.S., Franklin's work is that foundation.

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Our Mitchell Franklin

Alex Delfini and Paul Piccone

The passing away of Mitchell Franklin has meant not only the loss of a teacher and a friend, but also the closing of a chapter in intellectual history which, in the U.S., was hardly ever opened. Franklin's *persona* was certainly "born in the U.S.A." (he, on the other hand, was born in Montreal, Canada). Yet, he belonged to that European generation of thinkers, who, confronted with rising 20th century irrationalism, sought to vindicate an updated version of Enlightenment rationalism. In this, of course, he was in good company: this is precisely the kind of trajectory one finds traced not only by most of those intellectuals who came of age between the two World Wars (e.g., Lukács), but also, more recently, by thinkers still confronted with irrationalism as a national question (e.g., Habermas).

As with Lukács, Franklin blended rationalism and Marxism and came to identify the moving force of dialectical reason with "really existing socialism." The merging of the two approaches does not leave too many other choices. Since this progressive unfolding of reason needs an objectively existing historical embodiment and Franklin identified it with the USSR, it automatically translated into support for Stalinism. Franklin did not buy into Lukács' identification of the main division of world outlooks (rationalism vs. irrationalism), but defended the more orthodox and traditional line-up of materialism vs. idealism. Yet, in either case, the world takes on Manichean characteristics: *tertium non datur*.

One thing Franklin hated was what he called the "beautiful soul" — a figure borrowed from his favorite conceptual mine, Hegel, to describe intellectuals unwilling or afraid to take a definite stand. According to him, given the existing political polarization, not to take a stand meant to side with predominant powers and, therefore, with the forces of reaction. This is how he characterized the Frankfurt School in general, existentialism, and any other Left position critical of capitalist societies but unwilling to side unreservedly with the Soviet Union. Most of us were unconvinced and thus for the time being we chose to remain "beautiful souls." In his typical optimism, Franklin thought the inescapable objective contradictions of bourgeois reality would in the long run bring us to our senses after graduation.

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The theoretical distance that separated us from Franklin at that time can be gauged by our different criticisms of Marcuse exchanged in a meeting of the Society for the Study of Dialectical Materialism and subsequently both published in *Telos* no. 6 (Fall 1970). According to Franklin the problem with Marcuse was that he played the role of the "beautiful soul" unwilling to take a stand in the world-historical confrontation between capitalism and socialism. For Franklin, Marcuse was a "master of *Verstellung*" and ambiguity whose ultimate function was to "externally mediate" the conflict. Since this lack of involvment precluded an objective historical judgment, the outcome could only be the obfuscation of the nature of the class-struggle. For us, instead, the problem was the opposite: in his obsession with the equivalent of an objective agency of historical change Marcuse, having given up the proletariat in the early 1920's, kept shifting from a phenomenological-existential foundation during his Heideggerian apprenticeship, to a Freudian one during the *Eros and Civilization* phase, to an ultimately unacceptable biological grounding in his last years in *Essay on Liberation*. We thought none of these moorings necessary.

This sort of theoretical disagreements were always articulated within a warm, almost filial context. Yet, when, partly because of this, we would indulge in discussing some of the most orthodox Marxist tracts imaginable appearing at that time in East German or French communist party organs such as *Die Deutsche Zeitschrift für Philosophie* or *La Pensée*, it was almost painful to see the extent to which Franklin would go to defend them from our ridicule.

Franklin attributed our insistence on not only the possibility, but the necessity of a "third way" to our youth and naiveté. As we had not been through World War II and the threat of Nazism, we could allegedly afford the luxury of not choosing a side, at least not yet. For Franklin objective reason is not merely an ideal articulated in the cerebellum of a few uninvolved philosophers, but first and foremost a material force embodied in concrete social institutions. Unfortunately, in the wake of the Czech invasion, the Soviet Union did not appear as a very convincing candidate for this world-historical role. Furthermore, since he was stuck in what he considered the center of reaction, he sought to advance the cause of objective reason the best he could within law schools by fighting arbitrariness and "subjectivism" wherever he could.

This, of course, was not just Franklin's personal idiosyncracy. Rather, it was an obsession for several generations of politicized philosophers. With the possible exception of the Frankfurt School (Marcuse excluded), few have been able to live without a solid reference point upon which to nail their philosophy. Sartre succumbed to this lure to become the fellow traveller *par excellence*, and even Habermas, who has no room in his neo-Kantian conceptual arsenal for any dialectic, must postulate a counterfactual ever-unfolding progress to sustain his rationalism — in his case, the universalization of traditional bourgeois values.

The price one pays for this ideological guarantee is occasionally very high. Thus, Lukács had to stoop to the level of an official party apologist in

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Existentialisme ou Marxisme? and in *The Destruction of Reason*; and even Habermas has had to dissolve social relations into communicative action to retain a semblance of progress in his *Weltanschauung*. The fact that Franklin lived most of his adult life in New Orleans and Buffalo made his task considerably easier. It only embroiled him in a life-long struggle for the codification of American law.

Yet, all of Franklin's works must be seen in this light: in terms of the attempt to vindicate reason and universal progress against arbitrariness, onesidedness and reactionary irrational politics resulting from desperate right-wing efforts to retain unchanged existing relations of domination. Whether his means were always adequate to his intent is another matter, Thus, his struggle for codification against common law was predicated on the assumption of an arbitrary judiciary contraposed to a more democratic and responsive legislative branch. One can argue whether "elected" politicians are more or less corrupt than appointed judges, but that would miss the point. What mattered for Franklin was that the class interests he saw embodying objective reason — the working class — seemed to have a more direct impact on elected legislatures than on upper middle-class judges appointed rather than elected, and not directly accountable for their decisions.

What made Franklin's teachings and works uniquely exciting was not this orthodox ideological framework which most of his students — especially those less politically *au courant* in law schools — never quite grasped, but the immense amount of learning he brought to bear on any issue he tackled. And this, in addition to his responsiveness and openness towards students, is what made him so interesting for us at the time we met him in Buffalo in the late 1960s.

As luck would have it, he came to teach philosophy there precisely when the graduate student body had practically revolted against the cretinized versions of analytic philosophy and pragmatism being hawked by a faculty educated during the 1950s and thus permanently politically brain-damaged by McCarthyism and positivism. Not only had the graduate students successfully redesigned the Ph.D. program, but there no longer was any remote relation between what the faculty was teaching and what the students were studying. Hopelessly compromised by the Cold War and Vietnam, most faculty pragmatists were busy articulating a stale 1950 anti-communism clothed in lame humanist rhetoric, while their analytic philosophy counterparts pondered the profundity of "six ways to spill ink."

Within such a context, Franklin appeared as an intellectual oasis in a dismal academic desert. Here was someone who not only had read the texts we were busy unearthing from the darkest crevices of the library, but who could enlighten us as to the context within which they were written and whatever hidden agendas they presupposed: Hegel, Savigny, Marx, Lukács, the Frankfurt School, Carl Schmitt, Heidegger... he knew them all.

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Surprisingly enough, Franklin's predictions about the students eventually accepting his position came true — at least in part, with his second generation of Buffalo students, after the Cambodian invasion led to the final disintegration of the student movement. After all, what was the student movement all about? Inebriated by the newly-won social and sexual freedom made possible by the mass marketing of new contraceptive technologies and by the fiscal generosity of the Great Society, students came to see these benefits as bribes for supporting an all-pervasive imperialist system. This realization may have had something to do with the fact that, at the same time, they were being asked to fight a senseless war in Vietnam. Yet, from the Port Huron statement on, the student movement was predicated on precisely the extension of that democratization of social and political life which had always been official American ideology.

Within such a contradictory context, one immediate reaction was to seek an alternative account of what American society was all about by re-examining the tradition of political opposition that had been repressed out of existence not only in America, but in most Western capitalist societies. This is how many of us became Europeanists — only to belatedly rediscover, after long intellectual detours, that there were *very good* reasons why that opposition had either failed or, in some places, resulted in a totalitarian medicine worse than the disease it sought to cure.

But later groups of Franklin's students with less dubious ethnic backgrounds, and thus lacking the language facilities necessary to decipher the intricacies of European realities, chose a Marxist-Leninist shortcut. There some of them found all the answers in a clear-cut political program with Franklin there to reassure them that, even had they gone through the European intellectual labyrinth, they would very well come to realize, as he had, the soundness of his otherwise readily available Marxism-Leninist doctrine.

That such a shortcut was a mistake can be seen by the fact that, by buying into fast-food Marxism, not only would they not understand contemporary social realities, but they would also misunderstand their own teacher, Mitchell Franklin. For, when all is said and done, in spite of all the party rhetoric camouflaged behind Romanist legal terminology, Franklin himself remained a contradictory figure whose legal positions were not always fully consistent with the collectivist deductions he should have derived from his Marxism-Leninism.

Thus, when it came to the first amendment, Franklin took an absolutist stand against the predominant 1950s liberal theory of the "balance of rights." Contrary to the Hegelian and Marxist-Leninist emphasis on the primacy of either the totality or the class, here Franklin stood with the *individual* as the ultimate foundation for totality and class. Whereas both of these collective entities are sophisticated social and philosophical *constructs*, the individual freedom he wanted to see absolutely protected is an immediately irreducible

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lived reality in flesh and blood. Although Franklin would have violently protested *in theory* against such a *lebensphilosophische* interpretation, in practice he provided some of the most powerful arguments against any encroachment on the first amendment.

The same goes for his interpretation of the eighth amendment and the question of *infamy*. Against Marxist-Leninism's predilection for *statism*, Franklin, following his Louisiana predecessor Edward Livingston, fought against the death penalty on the ground that it would annihilate the individual by infaming him out of existence, thus violating the first and most fundamental of all amendments.

Legal theory and philosophy were not the only areas where Franklin occasionally exhibited some creative inconsistency. In everyday life he was a friendly, most considerate, grandfatherly, hard-line Stalinist. And who can forget the long technical discussion we used to have with him about the relative merits of the Datsun 240-Z in relation to Jaguars or other high-performance European sports cars? Franklin, by the way, never learned how to drive.

Clearly, Franklin will never be replaced and American philosophy will remain all the poorer for it. Yet, some of the solutions he provided are for problems which, by and large, no longer exist. The polarized world he theorized has long since disintegrated into innumerable fragments. While his stand concerning the first, fifth and eighth amendments remain crucial for American constitutional theory, along with his emphasis on its Roman law and Enlightment sources, his rationalism is dated and his Marxism unacceptable. The paradoxical outcome of all this, however, is that it may well turn out that he will have had much more influence on his philosophy students who did not follow him than on his law school acolytes, most of whom never quite understood him.

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Televisual Democracy and the Politics of Charisma

Tim Luke

The 1980s are still an era of transition in American politics. The republic continues to have one foot in the old party-based forms of electioneering as it steps with the other into a new mode.[1] As a new cadre of professional political consultants sets about "wiring elections," the old ideals of a responsible two-party system are crumbling. At the level of local municipal, county and special district elections as well as state legislature and even many House races, the old machinery remains in place.[2] Yet, in larger territorial units that encompass multiple media markets, like gubernatorial, U.S. Senate and presidential elections, the new media-based mode of electioneering that prevails functions outside of the parties in polling organizations, candidate Political Action Commitees (PACs), and campaign consulting firms.[3]

Even though traditional political ideology has been rapidly disappearing as a significant force in many voter's lives, the entire govern-

1. See F. Christopher Atherton, *Media Politics* (Lexington, MA: Lexington Books, 1984); Kathleen Hall Jamieson, *Packaging the Presidency: A History and Criticism of Presidential Campaign Advertising* (New York: Oxford University Press, 1984); Harold Mendelsohn and Irving Crespi, *Polls, Television. and the New Politics* (Scranton, PA: Chandler Publishing, Co., 1970): Elisabeth Noelle-Neumann, *The Spiral of Silence: Public Opinion —Our Social Skin* (Chicago: University of Chicago Press, 1984); Thomas E. Patterson, *The New Media Election: How Americans Choose Their President* (New York: Praeger, 1980); Larry J. Sabato, *The Rise of Political Consultants: New Ways of Winning Elections* (New York: Basic, 1981); and, Austin Ranney, *Channels of Power: The Impact of Television on American Politics* (New York: Basic/American Enterprise Institute, 1983).

2. See Walter Dean Burnham, *The Current Crisis in American Politics* (New York: Oxford University Press, 1982); and, Thomas Ferguson and Joel Rogers, *Right Turn: The Decline of the Democrats and the Future of American Politics* (New York: Hill and Wang, 1985).

3. Edwin Diamond and Stephen Bates, *The Spot: The Rise of Political Advertising on Television* (Cambridge, MA.: MIT Press, 1984), pp. 349-389; and, Thomas Ferguson and Joel Rogers, eds. *The Hidden Election* (New York: Pantheon, 1981). PACs are increasingly important in this mode of electioneering. For example, independent PACs alone contributed $12 million to Reagan's 1980 campaign compared to $50,000 to President Carter's efforts. See Elizabeth Drew, *Politics and Money* (New York: MacMillian, 1983), p. 134.

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ment, party and media establishment act as if it still matters on television. Television simply cannot be portrayed as having merely an external impact on political activity. Rather, it must be interpreted *as* politics. Television has become the primary means through which scientifically rationalized communication techniques are used to exert influence. The planned organization of televised spectacles accentuates the rational production and consumption of new variants of charismatic authority — usually called "image" — as part and parcel of marketing a winning candidate in the electoral process. Recent presidential elections, especially the 1984 campaign, illustrates how charisma has come to dominate electioneering.[4]

Culture and Society in Televisual America

The informationalization of America has facilitated its operation as a spectacular system. The production, consumption, distribution and management of information — in audio, data and image forms — has become an important economic activity in both government and business since the 1950s. Accelerated by the internationalization of capital, the state administration of science and technology as productive forces, and the growing need to aesthetically and/or technologically intensify the process of production to remain competitive, informational modes of production, organization and control are gradually displacing older industrial forms. In particular, electronic media, and complex codes of images they generate, have partially displaced large, formal, bureaucratic institutions as channels of personal identity, cultural communication, political administration, and social organization.[5]

Life is increasingly lived in the shadows of standardized images. In its concrete forms, like advertising, entertainment, news media, propa-

4. The tendencies have emerged clearly since only the late 1950s, and they still apply most fully in the United States. Some dimensions of this analysis might be useful for understanding senatorial, congressional or gubernatorial campaigning in the larger states of the union or in major urban media markets. Likewise, the employment of rational techniques to develop a consumable discourse of charisma is spreading transnationally as well. Given America's growing specialization in the export of services, these insights from the American context also may apply in varying degrees to televisual modes of politics in Canada, Europe, or the Third World. For additional discussion, see Sabato, *The Rise of Political Consultants*, *op. cit.*; Atherton, *Media Politics*, op. cit.; and Mendelsohn and Crespi, *The New Politics*.

5. See Tim Luke, "Informationalism and Ecology," in *Telos*, 56 (Summer 1983), pp. 59-73; Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (New York: Basic, 1973); and, Marc Uri Porat, *The Information Economy: Definition and Measurement* (Washington: Office of Telecommunications, U.S. Dept. of Commerce, 1977).

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ganda or consumer culture, these scripted images of everyday life coalesce into complex cultural codes. Such codes now broadly frame the "real time," "standards of living," or "quality time" of most consumers. Thus, "the spectacle is the present model of socially dominant life. It is the omnipresent affirmation of the choice already made in production and its corollary consumption. The spectacle's form and content are identically the total justification of the existing system's conditions and goals."[6] The information-intensive processes of this regime cannot be dismissed merely as mass deception. Cultural reproduction grounds itself upon *image* or the "affirmation of appearance and the affirmation of all human, namely social life, as mere appearance."[7] As a result, corporate coded styles coexist with, and even at times prevail, over substantive communal meaning as the basic legitimation of human action. When CNN promos assert, "experience life on CNN," CBS ads declare, "share the spirit," and NBC kickers claim, "we are making tomorrow's memories today," these specific modes of spectacular production ironically reveal how corporate capital presents itself as a social relation of people mediated by images. The "real" world unfolds in the swarming dots of a twenty-five inch screen in trinitronic telereality.

Contemporary culture commodifies everything — images, ideas, values, history, policies, community or power.[8] As Baudrillard argues, these trends follow from supplanting market-based commodity-forms with code-based sign-forms in a new political economy of the sign. Commodity fetishism centers not on real "use values" of products but rather on "sign values" which differentiate and valorize goods in processes of managed consumption. Particularly in the televisual mediascapes, "it is the sign exchange value which is fundamental — use value is often no more than a practical guarantee (or even a rationalization)."[9] Woven into the codes of exchange, "the signified and the referent are now abolished to the sole-profit of the play of signifiers, of a generalized formalization in which the code no longer refers back to any subjective or objective 'reality,' but to its own logic ... all reality then becomes the place of a semiological manipulation, of a structural

6. Guy Debord, *The Society of the Spectacle* (Detroit: Red & Black, 1983), No. 6.
7. *Ibid.*, No. 10.
8. Luke, "Informationalism," *op. cit.*, p. 49-67; and, Jean Baudrillard, *In the Shadow of the Silent Majorities ... Or the End of the Social and Other Essays* (New York: Semiotext(e), 1983), pp. 2-38.
9. Jean Baudrillard, *For a Critique of the Political Economy of the Sign* (St. Louis: Telos Press, 1981), p. 29.

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simulation."[10] Although these changes began as early as the late nineteenth-century with the rise of corporate capitalism, the advent of informational modes of production has now brought them to maturity in televisual cultures.

Working within these sign-driven structures, then, average citizens/clients/consumers become a vital productive force as active consumers of images/products in both the economy and the state. A society based upon such sign-circulation also continually elaborates its own rules for self-understanding. The practices of democratic politics are no exception. Elections, in fact, are now commodified and packaged modes of democracy; the exclusive signifier of democratic practice. Their forms and appearances, so closely monitored in all details on the news media, represent democracy, because it is all that is remembered from traditional democratic activity. The rest is disappearing. Yet, such preprocessed political choice is not merely a deception; it is the essential means of organizing political reality in its present commodified forms. Democracy is no longer lived, but it is increasingly represented meticulously in televised spectacles as if it was.

Charisma and the Spectacle of Democracy

Charismatic claims to authority become crucial in televisual campaigns. As the decline of party nominating conventions and the rise of state primaries shows, the production and consumption of charismatic images, which have become the essential political sign-values in this regime, now substitute for an exclusively intra-party nominating procedure.[11]

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10. Jean Baudrillard, *The Mirror of Production* (St. Louis: Telos Press, 1975), pp.127-128. In this regard, Baudrillard also observes: "The political sphere also only survives by a credibility hypothesis, namely that the masses are permeable to action and to discourse, that they hold an opinion, that they are present behind the surveys and statistics. It is at this price alone that the political class can still believe that it speaks and that it is politically heard. Even though the political has long been the agent of nothing but spectacle on the screen of private life. Digested as a form of entertainment, half-sports, half-games (see the winning ticket in American elections, or election evenings on radio or TV); like those old comedies of manners, at once both fascinating and ludicrous. For some time now, the electoral game has been akin to TV game shows in the consciousness of the people. The latter, who have always served as alibi and as super-numerary on the political stage, avenge themselves by treating as a theatrical performance the political scene and its actors. The people have become a public. It is the football match or film or cartoon which serve as models for their perception of the political sphere. The people even enjoy day to day, like a home movie, the fluctuations of their own opinions in the daily opinion polls. Nothing in all this engages any responsibility." *In the Shadow ...*, *op. cit.*, pp. 37-38.

11. Diamond and Bates, *The Spot*, *op. cit.*, pp. 373-385; Mendelsohn and Crespi,

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To fully understand the importance of charisma, it is helpful to re-examine Weber's understanding of charismatic authority. On the one hand, he sensed the potential importance of charismatic appeals before WW I. On the other hand, however, some of his observations only relate to the practices of the now dead nineteenth-century urban political machines. Weber uses charisma in the explicit sense of a "gift of grace," which manifests itself in a collective recognition of exceptional powers in an individual. "The term 'charisma' will be applied to a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities ... . What is alone important is how the individual is actually regarded by those subject to charismatic authority, by his 'followers' or 'disciples'."[12] Charisma is simply not a personal trait but demands group recognition of charismatic qualities. As Weber contends, "psychologically this recognition is a matter of complete personal devotion to the possessor of the quality, arising out of enthusiasm, or of despair and hope."[13] Therefore, charismatic authority tends to emerge only infrequently. It is a mode of subjective legitimation "born ... of a belief in the mysterious gift of one man which that man shares with those who follow him."[14]

While Weber admits that "charisma is fated to decline as permanent institutional structures develop," he also saw charisma as an integral if episodic element in modern forms of leadership, particularly in representative democracies. Weber saw the West as somewhat unique inasmuch as the election of rulers in classical and medieval Europe had slowly evolved into many different representative popular democracies.[15] In such regimes, the pre-modern traditions of rulers being popularly acclaimed by the ruled on some charismatic basis could develop into "a regular 'electoral procedure,' with a 'right of suffrage' defined by rules, either direct or indirect, elections based on local constituencies or proportional representation, 'electoral classes' and

Polls, Television and the New Politics, *op. cit.*; and, Jamieson, *Packaging the Presidency*,.pp. 446-453.

12. Max Weber, *Economy and Society*. vol. 1 (Berkeley: University of California Press, 1978), pp. 241-242.

13. *Ibid.*, p. 242.

14. Reinhard Bendix, *Max Weber: An Intellectual Portrait* (Garden City, NY: Doubleday, 1962), p. 187.

15. Max Weber, "The Nature of Charismatic Domination," in *Weber: Selections in Translation,* ed. W. G. Runciman (Cambridge: Cambridge University Press, 1978), p. 248.

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"electoral circles'."[16]

These evolutionary tendencies in representative democracy have spread gradually throughout the West. In his time, however, Weber regarded the U. S. as having the most extensively developed "charismatic" electoral system, because "even the formally supreme rulers are themselves elected, and there, of course, one of the most essential aspects of the business of an election is seen inside the 'nomination' campaigns of each of the two parties."[17] This mode of leadership selection historically accentuated the search for real charismatic authority. The imperatives of influencing the masses on a nation-wide scale and the costs of mounting a national campaign give both the primary campaigns and the general election a plebiscitary importance. The various candidates are not only working for electoral victory, but are also seeking the "recognition of a claimant as the personally qualified, charismatic ruler, either for the first time ... or a renewal."[18] Television has only accentuated these tendencies as the mediating institutions of store-front campaigns, volunteer canvassing, and local party organizations are eclipsed by electronic electioneering managed by media consultants and paid for with PAC money.

The availability of a well-regarded former governor, a war hero or popular patrician politician as a candidate, like Washington, Jackson, Grant, Roosevelt, or Eisenhower, traditionally could change the electoral equation. Weber notes, "if there is a 'hero' available, he seeks to break the domination of the party machine by imposing plebiscitary forms of designation, and in some cases by transforming the whole machinery of nomination. Whenever charisma gains the ascendancy in this way, it naturally runs up against the resistance of the normally dominant apparatus of the professional politicians, especially the bosses who organize leadership and finance and keep the party functioning and whose creatures the candidates usually are."[19] With television, however, candidates can work *outside* of the traditional structures of political parties more easily by substituting their personal charisma for institutionalized bureaucratic resources. Consequently, the dynamics of building a popular coalition or mass political following televisually demands a new type of charismatic politics. The initial models for this shift can be found in John F. Kennedy's 1960 and Goldwater's 1964 campaign as well as Bobby Kennedy's or McCarthy's

16. *Ibid.*, pp. 241-242.
17. *Ibid.*, p. 242.
18. *Ibid.*, p. 241.
19. *Ibid.*, p. 247.

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1968 efforts for the Democratic nomination. However, Reagan's successful 1980 election, beginning with the organization of his campaign PAC in December 1976, and based upon images from his years as General Electric's corporate spokesman and Governor of California from 1966 to 1974, set the mold for this style of democracy. Given televisual networks of communication, Weber's focus on charisma is even more crucial, because televised elections clearly do not involve merely "a choice between candidates but a recognition of a pretender's claim to power."[20]

Weber observed in the early 1900s that presidential electioneering was often "purely emotional, on a level with party processions and festivals: the aim of all of these is to bring to the attention of the masses the idea of a party's power and certainty of victory and above all of the leader's charismatic qualification."[21] The medium of television, however, has provided a perfect means for quantitatively expanding these elements of spectacle, which now compounds into a qualitative structural change. Televisual image production has institutionalized such forms of emotional influence over the electorate, while structurally transcending many traditional party procedures. Coalition-building in electoral politics centers on imagery and its televisual engineering. Television programming has created a unified mix of national "mediascapes," which partly subsume and occlude America's traditional politics of region, section, class and race in new national identities. To take the election, candidates must first dominate these mediascapes. Rather than individuals proving their personal charisma to future party nominating committees in great political or military crises, televisual sites of production can generate auras of charismatic authority directly among viewers for potential nominees to public office. What Weber saw as an episodic aspect has become a predominant fixture.

Charisma, under these conditions, is an objectification of the public's aspirations returning to itself as image. Leaders now self-select themselves for a plebiscitary affirmation in the polls, primaries and party caucuses, which recognize not their formal claim on an office but rather the televisual legitimacy of their pretensions to power. Campaigners try to capture fragments of alienated public aspirations to generate their own aura of extraordinary powers, to whip up great popular excitement, and to command an emotional hero-worship from the voters. "Real" charismatic personalities, like Humphrey, Connally or

20. *Ibid.*, p. 245.
21. *Ibid.*

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Harris, who could deliver powerful orations in packed lecture halls, did not gain telereal recognition of their gifts. Yet, personally uncharismatic individuals, such as Carter, Anderson, or Hart, have drawn strong shares off of their telereal charisma, making them "charismatic." While it will not work for everyone, the informational means of production provide techniques to aesthetically intensify almost any individual candidate's stand on the issues, personal character, or apparent promise of electability.

Televisual Democratic Politics in America

These televisual techniques have not entirely displaced the traditional process in mass political communications. Secondary reinforcement of mass media messages from friends, family and local opinion leaders is still important. Face-to-face campaigning still predominates in local or regional offices. Televisual electioneering is not a closed loop with guaranteed results. Communication can be garbled. Many voters simply choose to drop out as the constantly falling rates of voter participation over the past generation illustrate. Old loyalties persist despite the new spectacular system of coalition-building. There are still "yellow dog Democrats" and "dyed in the wool" Republicans. Some voters still judge candidates' "effectiveness" apart from image. Polling results can be wrong and campaigning strategies often misfire. And, as time passes, voters have become more sophisticated about media imagery.

In the post-Watergate environment of 1976 and 1980, Carter's struggle to show he was the best available instrument to create "a government as good as the American people," or Reagan's efforts to mount an anti-New Deal/Great Society "new beginning," were explicitly disconnected from political parties tainted by Watergate and Vietnam. Televisual charisma comes into focus as candidates tag themselves with these sign values to articulate the alienated spirit of the public. In 1976, the voting public sought and chose an "outsider" hero to save itself from "Watergate/Vietnam." And, in 1980, it chose another hero to save itself from "Iran/OPEC/inflation."

The intent of these charismatic discourses is plain. As Fiske and Hartley observe, "television discourse is not 'immutable' and 'impersonal' in nature, and its mode is the reverse of literate or formal logic: its mode is that of rhetoric. For instance, the television message is validated by its context, by the opposition of elements (often visual/verbal), and not the deductive requirements of the syllogism."[22] In the

22. John Fiske and John Hartley, *Reading Television* (London: Methuen, 1978), p. 117. These modes of argument have reduced the typical political ad from the 30 mi-

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spectacle, saying and showing one's self as charismatic "makes" one *charismatic*. The verbal and visual cues of candidates' sign values reveal charisma in the act of claiming charisma. Carter's 1976 or Reagan's 1980 and 1984 growing acceptance in the polls, primary victories, and recognition in the news media served as signs to the public of their exceptional powers. Simultaneously, this popular recognition of Carter's or Reagan's spectacularly mediated charisma constituted "proof" of their "elect" status, their gifts of grace, their "election" to stand for general election by the voting public. Without (or even despite) the mainstream Democratic and Republican parties' *imprimatur*, televisual sign value can garner widespread name recognition, high approval ratings and firm support in the polls, which are the recognition required of the outsider's genuine claims on charismatic authority. Once polls or state primaries roll victories up in their favor, this charismatic recognition can feed off its own momentum with its rising production and consumption in the media.

This sense of "election" gives voters a promised sign of greater gifts of grace in the general election. With an "elect" politician, the voter often can project his favorable views on to the candidate in the "image," the "feel," and the "look" that is projected.[23] Hence, the symbolic

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nute speech in the 1952 presidential campaign to the 30 second spot in the 1980 and 1984 elections. See Jamieson, *Packaging the Presidency*, *op. cit.*, pp. 446-453.

23. This fusion of political consumption and non-political consumption is clearly revealed in President Reagan's 1984 campaign advertising. In one text, entitled "America is Back" images of everyday life flow along with this voice-over: "In a town not too far from where you live, a young family has just moved into a new home. Three years ago, even the smallest house seemed completely out of reach. Right down the street, one of the neighbors has just bought himself a new car, with all the options. The factory down by the river is working again. Not long ago, people were saying it probably would be closed forever. Just about everyplace you look, things are looking up. Life is better. America is back. And people have a sense of pride they never felt they'd feel again. And so it's not surprising that just about everyone in town is thinking the same thing. Now that our country is turning around, why would we ever turn back?" Germond and Witcover, *Wake Us*, *op. cit.*, p. 477. In another text, titled "It's Morning Again," the narration asserts: "It's morning again in America. Today, more men and women will go to work than ever before in our country's history. With interest rates at about half the record height of 1980, nearly two thousand families today will buy new homes, more than at any time in the past four years. This afternoon, sixty-five hundred men and women will be married, and with inflation at less than half of what it was just four years ago, they can look forward with confidence. It's morning again in America. And under the leadership of President Reagan our country is stronger, and prouder, and better. Why would we ever want to return to where were were less than four short years ago?" Germond and Witcover, *Wake Us*, *op. cit.*, p. 478. The symbols intermingle buying new cars with all the options, moving into bigger houses, and starting new families with the product, "leadership that's working" — President Reagan. Here, the political commodity and commercial commodity are indistinguishable in the spectacle, and the spectacle's survival is tied contingently to the consumer/voter acceptance of a politi-

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struggle for charismatic authority increasingly emphasizes nuances in style, symbol-management and image-cultivation, usually independent from any objective measure of effectiveness. In turn, hard or soft, strong or weak, warm or cold, open or closed, aloof or affable variations in the candidate's style are daily coded and decoded in the news media as their relative political sign values. They become indicators of the candidates' leadership caliber, concern for the people, and approach to problems. And, the range of voters' popular devotion and enthusiasm for candidates often rests on the politico's skillful or hapless effectiveness at simultaneously seeming warm, hard, strong, open and affable in several different demographic markets.

Electoral politics at the presidential level is essentially a popular docudrama in perpetual syndication. Candidates and political leaders, as the electronic neighbors of television stars, are gradually transformed themselves into star celebrities, who are "spectacular representations of a living human being ... being a star means specializing in the *seemingly lived*,"[24] for those denied access to the circles of power. The gaze of electronic media continuously creates pre-electoral scouting reports, tags potential charismatic recruits and red-shirts less promising walk-ons. In "working to stay informed," democratic citizens, as the *National Enquirer* records, "have enquiring minds." In addition to seeing candidates scoring points on "talking heads" public affairs programs or evening news clips, the viewer/voter wants to know everything about national leaders as "stars." The media's consideration of politicians' ideological outlooks and policy stances pales in the shadows of the constant attention given to their cancer operations, peanut farms, golf course goofs, crooked friends, family scandals, cattle ranch antics, or high society wives. The "right stuff" is as often an attribute of "coping as stars" as much as it is a quality of rational political discourse. The gaze of television, which elected them before the electorate, also continues after politicos leave office. Just as entertainment celebrities "exist to act out various styles of living and viewing society,"[25] politicos also act out the real political behaviors largely denied to the citizenry — participation, access, meaningful voice, decision-making, autonomous acting in the real arenas of power — along with their *People* magazine lifestyles. Traditional democratic behaviors, then, for both the electorate and the elected devolve into televisual systems. Candidates seek signs of their "elect" status in the new participatory behavior of the silent majorities, who gain articulation in

cal commodity that reputedly outshines its competitors. Just as consumers bought into GE's all-electric "House of the Future" with Reagan in the 1950s, they now could opt with Reagan in the 1980s for a promising "America of the Future."

24. Debord, *Society of the Spectacle*, *op. cit.*, No. 60.

25. *Ibid.*

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granting politicos their "election" to seek power and enact their alienated aspirations.

These participatory modes are particularly true of the perpetual plebiscite conducted in the polls on candidate popularity, image and support. The two-party competition provides a constant "cola war" for the tastes of a "new generation" over how their candidates constitute the ultimate "this is it" in politics. Getting more shelf-space means holding office. Who leads, who trails; who dominates, who pales; and, who will be chosen, who will be rejected in the race to produce an electoral majority? The polling process constantly scans different demographic groups to answer these questions daily, weekly, and monthly.

Polling seeks to weld handles on to blocs of voters by segmenting their consciousness into predefined categories and attributes that comprise the handles. The modes of consciousness in these "focus groups" become independent variables in causal models of behavior management as pollsters probe the public's alienated aspirations. While it is an inexact technique, probabilistic statements about different demographic groups can be made within given ranges of accuracy. Voters with X gender, racial, income, regional, ideological, religious attributes will or will not vote yes or no for Y candidate, issue or image. Once these handles are fixed, pollsters can return periodically to turn them, monitoring how image-presentations and symbol-management have moved the populations with X, Y or Z demographic-attributes toward voting probabilities of A, B or C levels on L, M, or N candidates and issues. Polls find the voters' "hot buttons" and tell campaigners how and when to push them.

Polling tracks how well voters are experiencing their political lives on ABC, CNN or CBS. Audience/market identification, definition, winning and control is the goal of charismatic discourses in the media. Today's product must remain consistent with yesterday's and tomorrow's product. Rapidly retooling a "new Nixon," "new Mondale" or "new Carter," like "New Coke," are dangerous gambits full of peril. To valorize their sign values, candidates always must look and sound like leaders, maintain their momentum, keep their support levels in the polls, and manage their images in accord with their behavior. Televised reality is *reality*, and the voters respond to it as such. Polling introduces voters as consultants *en masse* on the candidate's name recognition, command over loyalties, and types of demographic support. Having produced measurements of some blind spot in the spectacular packaging, polling results serve as a targeting grid for new symbol-signing strategies and image-intensification. New signs must suggest the right meanings in the demographic diversity's opinions. When Caddell's theoretical 1984 "Candidate Smith" turned on focus groups

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of baby-boomer yuppies in the Midwest, some rhetorical re-engineering and style shifts in Hart campaign opened new fields of support for its candidate in Iowa.[26] If polls reveal Reagan's approval level slipping due to his bumbling 1984 debate performance in Louisville, then a snappy one-liner about Mondale's age in Kansas City puts the age and competence issue to bed for the rest of the campaign. With the next run of surveys, pollsters can find whether or not such strategies revalorized the right or wrong sign values in the voters' consciousness. Polls are a permanent electoral screen. Every poll is a microelection staged by professional analysts, and every election is the last macropoll affirming the data-series of the previous multitude of microelections.

The news media serve as a surrogate electorate during much of any candidate's campaigning. The memory of the rational-activist citizen is kept imperfectly in circulation by the roving press corps. This relation is almost inescapable in spectacular societies inasmuch as the media construct and sustain the modern televisual public sphere. The media, like the voters once did, now attempt to pin down candidates' stands on the issues. Media personnel also constitute the core of opinion leadership in spectacular participation. They handicap the competing candidates in the electoral horse race, noting who leads, who lags, who is a sure bet, or who is a long shot. Similarly, media figures also work to extract pledges of policy direction, post-electoral responses to public problems, and assurances of attention to pressing needs. Should the candidates backpedal on these promises or fail to deliver on their pledges, the media occasionally serve as electronic watchdogs, pointing out salient lapses in the candidates' memories. Periodically, the media even open direct lines of communication on live talk show or phone-in formats from the voters to candidates in order to connect the voting public spectacularly to the electoral competitors.

The media now work face-to-face with politicos in the nation's videoplaces, and the viewing public participate more remotely through this surrogate electronic electorate. Media campaigning also presumes the critical subtext of "metacampaigning" aimed at the news media, which "is waged not so much to win public support as to convince big contributors, party workers, reporters, and other attentive

26. Polling the voters in 1983-1984, Caddell found a great deal of "unfocused interest" in the electorate for "new ideas" in the Democratic party. Creating a fictional "Candidate Smith" Caddell ran a "new ideas" program against the existing Democratic leadership in the polls with great success. In turn, political life imitated this political art. "Caddell's findings," Hart said later, "documented empirically what I had felt intutively in 1982 and 1983. I didn't become Smith, I was Smith." Germond and Witcover, *Wake Us*, *op. cit.*, 1985, p. 132. Yet, Hart failed to see, as Caddell argued to him, that "this movie is not called *The Lone Ranger*. This movie should be called *The Return of the Magnificent Seven*. And you get to be Yul Brenner ... It is a generation coming back to get involved again," Germond and Witcover, *op. cit.*, p. 134.

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political elites of the campaign's credibility."[27] Under these conditions, the political event or figure being covered is less important than the sort of coverage or presentation they are obtaining, which is actually the full event or figure being shown. The media are not simply participant observers in the autonomous unfolding of political activity. They are instead observing participants. If an event occurs, and it is not distributed widely in the media, then it basically does not occur. Correlatively, if a non-event occurs on the media, such as Bush's offhand remark about "kicking ass" in the 1984 debate with Ferraro or Nancy Reagan's feeding answers about strategic weapons to the President, which were both inadvertently captured on undetected live mikes, then it becomes a significant happening.

The media are also the surrogate voice of the voters, articulating their concerns and interests in a standardized political code. In this regard, Noelle-Neumann notes, "the media provide people with the words and phrases they can use to defend a point of view. If people find no current, frequently repeated expressions for their point of view, they lapse into silence; they become effectively mute."[28] Without the media's codified political discourses on political issues and figures, the voters often remain silent or, at least, inarticulate. For example, symbolic signatures, like Hart's "New Ideas," Mondale's "Where's the Beef," Glenn's "The Right Stuff," Jackson's "Rainbow Coalition," and Reagan's "New Beginning," all were minted and/or circulated endlessly in the 1984 election coverage. Yet, only by adapting these tokens into their own outlooks can the real electorate become "conversant" with the surrogate electorate's watch-dogging, issue analysis, and pledge extracting of political figures. In turn, they can pass these tokens on to the pollsters, politicos, or reporters, when asked, which seals the cycle in the news media's role-playing as their surrogate voice. Once the president is shown on television to be "acting decisively" on Wednesday, when news media polling asks "do you support the President" on Friday, the polls anticipate and prefigure the response in reporting on Thursday that the level of popular support in the polls is climbing. As Stamaty only half-jokingly maintains in "Washingtoons," these stylized speech-acts circulate and affirm an entire lexicon of "rapid pacification fuzzwords" in every campaign.

The public sphere or *res publica* is no longer the city square, an urban commons, city hall or town meetings. It is fused in the focal field of a remote mini-cam broadcasting live to the viewers'/voters' television screens. Signs and signing displace political discourse. Posting a partisan bumper sticker or being a dependable contributor on a direct

27. Diamond and Bates, *The Spot*, *op. cit.*, p. 6.
28. Noelle-Neumann, *Spiral of Silence*, *op. cit.*, p. 173.

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mail list or wearing a political tee shirt replace engaging in political debate on city squares. Citizenship is now like being a fan, who votes favorably for media products by purchasing them, extolling their virtues, or wearing their iconic packaging on one's bill cap or tee shirt. One accepts political sign values in campaigns by buying its products, identifying with its positive attributes, discounting its negative qualities, and touting its appeal in one's everyday life. In this form of informational democracy, voting is consuming, and consistent voting is product/brand loyalty.

Campaign Imagery: Producing Charismatic Authority in 1984

Despite these techniques of rationalization, campaign imagery often is difficult to manage inasmuch as it passes through several different stages of production. Campaign consultants produce a package of images that are presented in paid media spots and cited in free news media coverage. The news media, in turn, produce a new stream of mediated images that are represented again to the campaigners and viewing public. Campaign operatives also must work to guide what the media present to the audiences and to steer how the audiences receive their spectacular texts. And, lastly, they must gauge how the audiences represent their reception of these messages to the news media, opinion surveys or political polls.

As the 1984 campaign reveals, the charismatic signs the candidates adopt are usually tied to some mix of the big "issues," their personal "character," and the strategic probability of their "electability" to trigger the signified sense of leadership. Hart's "new ideas" theme or Mondale's call to "the losers" in America mark this kind of charismatic construct. Another sign of authority is a presentation on the grounds of "character" traits, which signify charismatic uniqueness. Glenn's "astronaut-war hero-business man-senator" imagery or Reagan's "leadership that works" approach illustrate this line of presentation. Signs of charismatic gifts also can be tied to a candidate's probabilities of "electability." Being the probable choice of millions thereby gives one the grace of millions supporting this choice. Hart's appeal to the rising generation of baby boomers, Mondale's exhortation of the long-gone New Deal coalition, Jackson's call to a "rainbow coalition", and Reagan's re-enlistment of "everyone better off than they were four years ago" in 1984 are their particular sign values, soliciting electable gifts of grace from the voting public.

Given the quality of executive leadership uncovered in the White House by the Tower Commission, it is important to understand how Reagan televisually won his election. "Irangate" makes understanding these dynamics even more important. In the 1984 campaign, Ronald Reagan's media advisors, the "Tuesday team," manufactured a rich

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package of carefully chosen images to convey the president's charismatic authority. The telereality of Reagan's spectacular texts were treated as reality by both the news media and the voting public. In turn, Reagan's campaign stood by their telerealistic productions as the reality of 1984 in America. The voters chose to coproduce Reagan's products of prosperous hope in their imaginations rather than purchase Mondale's package of crisis-ridden gloom. Again, the voters, like consumers, functioned as a productive force, co-generating televisual commodities fusing ambiguous sign values with their individual referents of American democracy. In this case, the commodity as a factually real illusion was very attractively packaged as "Springtime in America, 1984," "Leadership That's Working," and "America is Back" to create the coalitions and and voting blocs of a landslide. Those who validated these texts with their votes participated in Reagan's redefinition of the GOP's policies, electoral history and political agendas in Reaganite terms. Those who did not remained outside the telereal coalition, as Mondale backers, or abstained from participation completely.

Despite the worst recession since 1932, a total washout on foreign policy, high unemployment, and growing federal budget deficits coupled with unprecedented balance of trade problems, the economic upturn of 1983-1984 enabled by the Tuesday team to package the *realities* of Reagan's first administration as a *telereal* American renaissance in the making. Reagan's media presentations rarely referenced real economic, political or social events. Instead, they networked out of presidential "media events", tapping into the telemythic self-understanding of the voting public, which has come to define itself over the past generation in new spectacular codes of comprehension. Correct political consciousness in 1984 was formated as the "feeling good" attitude of McDonald's commercials, *Mayberry*, *R.F.D.* reruns, or Pepsi ads trumpeting the choices of a new generation. These forms also acknowledged that the successful product continuously must change. The crusading outsider coalition organized by the "man from Plains, Georgia" cited the populist attitudes in post-Watergate 1976 America. Reagan's 1980 presentation prefigured *Rambo* with images of a resurgent America that no tin-horn Third World dictator would dare push around. Likewise, a rerun of "new ideas," promising JFK-like vigor and Camelot II, looms ahead in 1988 on both the Democratic and Republican programming schedules as Reagan's second term looks more and more like Ike's second.

The eighteen-minute film, produced by the Tuesday team, which was broadcast simultaneously at the 1984 Dallas GOP convention and on the major television networks, typifies how the discourse of charisma affirms a candidate's "election" and builds electoral coalitions in

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the society of the spectacle.[29] Clips from "The Film" were also used repeatedly as spots throughout the Fall campaign. Reagan in these texts is connected with the conduct of everyday life, and the course of even ordinary daily events is made dependent upon retaining the President. Opening with images of sunrise over a farm, the film immediately cuts into Reagan's 1981 inaugural oath of office moving into a stream of images: cowboys working in a corral, a worker at the bench, a paper boy, commuters, a flag raising at a camp, the Capitol building at night with a flag, and, then, Reagan in the Oval Office remembering he is the custodian of a mighty institution as he recalls the meaning of America and the preceding images in its "new beginning." While he was "elected" by events and voters to rule, the images humbly argue that he did not do it alone. He is merely the heroic human manifestation of America itself, which annointed him, his new team of staffers, Vice-President Bush, and a talented cabinet full of sacrificing men to aid his extraordinary decisions and powers.

The narrative then turns again to an obviously "ordinary" man on the street. An actor, he looks totally staged, but completely "real," as he remarks "the U.S.A. is back" with pride, new-found patriotism and more jobs. This segment rehearses a line of reasoning for voters to rationalize their choice for President. Reagan, as the screen points out, is the moving force behind it all. The images imply many are participating in this comeback, and all are invited to join again during 1984. More images of power and new growth follow: Niagara Falls, a child playfully running, a wedding party, people moving into a new house, welders at work, a farm in production, and the Statue of Liberty undergoing its face-lift swathed in scaffolding. But, this "new beginning" depends on the voters' continuing purchase of new products, as the film returns to Reagan, who now is shown at a church service with troops near the DMZ in Korea. The image is clear. Reagan is a strong man, favoring a powerful defense and growing economy to put America

29. In this view, Richard Darman, Reagan's image manager in 1984, asserted that the President's charismatic authority must be videographically packaged as the iconic summation of America itself. Thus, "Reagan would seek reelection less on the detail of his performance or his platform than on the atmospherics of that second Era of Good Feeling he had helped bring to life. 'Paint Mondale as (a) weak, (b) a creature of special interests, (c) old-style, (d) unprincipled, (e) soft in his defense of freedom, patriotic values, American interests, (f) in short, Carter II," Darman had written in June. "... Paint RR as the personification of all that is right with, or heroized by, America. Leave Mondale in a position where an attack on Reagan is tantamount to an attack on America's idealized image of itself — where a vote against Reagan is, in some subliminal sense, a vote against a mythic 'AMERICA'." Goldman and Fuller, *The Quest for the Presidency 1984* (New York: Bantam, 1985), p. 247. This insight into the GOP's 1984 strategy clearly reveals how political consultants *do* approach charisma as an alienated objectification of national spirit returned to politics as the imaginary coding of political heroes or incumbent office-holders.

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back on top. The film also reminds potential members of his coalition at their screens that inflation and the prime rate are down; home ownership, auto sales, industrial production are rising. And, it shows clips of Reagan talking on television, making his program clear and talking one-on-one with everyone in their living rooms. The narrative cements its coalition with more promises. The President will never cut social security; he cares for the ill, the old and needy children. He keeps inflation down to protect older voters on fixed incomes and young families starting out. Again, the vital demographic sub-groups and potential issue-group niches are assured and invited to participate in his coalition rather than Mondale's or Jackson's.

The text then cuts quickly to the March 1981 assassination attempt. Any great man could do what Reagan has done so far, but the film hints only a truly extraordinary man with real gifts of God's favor could do all this after a nearly fatal shooting. Reagan directly comments he did not know he had been shot, but joked that he hoped, as he was wheeled into the hospital, his doctors were Republicans. And, with melodramatic radio hour background music, he points out his own fortunate survival: God cared for and protected me. Stressing this gift of grace, he exclaims from that fateful moment on all of his time left belongs to the service of "someone else," or the Almighty himself. In turn, God's chosen agent, is shown on a sweep across the world. In quick cuts from points around the Pacific Rim, Reagan suggests he is "new ideas" in action, while Hart is just talk. He knows the future of America lies in trade and peace with our Asian trading partners.

Yet, he also is mindful of America's historic ties to Europe, as the film shifts to Reagan at Pont-du-Hoc in Normandy on June 6, 1984. Here, in the viewers' minds, he reaffirms that America has fought hard and sacrificed much —Reagan addressing veterans in a war cemetery in France— to create and protect the "freest society the world has ever known."[30] Even so, as the image flow now returns Reagan to the Roosevelt Room in the White House with its military banners and sense of history, he assures all that he will work for peace and hopes no more battle streamers will hang from the battle flags framing him as commander-in-chief. Like the astounding cough-cold medicine ad in which an actor intones, "I am not a doctor, but I play one on TV," Reagan here implies "I am not the Emperor of the Western World, but I play one on TV." In turn, for continued relief, the voter can prescribe for himself "more Reagan" to remain secure.[31]

30. Tim Luke, "History as an Ideo-political Commodity: The 1984 D-Day Spectacle," in *New Political Science*, 13 (Winter 1984), pp. 49-67.

31. The aesthetic allure of the Reagan commodity clearly proved very compelling. As one convinced voter assured the press, "I think he's [Reagan] just doggone honest. It's remarkable. He's been on television — what I have heard, about 26

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Another cut assures the viewer that Reagan can "do it." Crossing billowing plains of grass and purple mountains in a rapid scan, the film shows Reagan back at his Santa Ynez mountains ranch. He rides, does ranch work, cuts wood —proving he is younger than his years and able to turn in another solid term of office. These images prove he is an activist president and vigorous man, rather than the napping pensioner his critics decry him as. Finally, as the background singing emphasizes an America of pride, in new fighting trim and committed to worthwhile values, Reagan is shown with his hands clasped in victory over his head, like Rocky in triumph, proclaiming "God Bless, America." He asks with the humility of a God-gifted servant for the opportunity to continue the good works of the last three and a half years. At the convention, as the lights went up, "The Film" faded into "Reagan live," striding to the podium as if he materialized from the screen.

The alienated desires of a new American coalition, seen as eighteen minutes of film, gained immediate objectification in this heroic individual. As political television's most consummate talking head, Reagan reiterated the key themes for his spectacular coalition, making these film images more telereal. Turning the verities of New Deal/Great Society electoral politics on their head, he asserted: The Democrats are now the party of fear, pessimism and limits, while the Republicans are the rising movement of hope, confidence and growth. While Mondale promises the old ideas of big government, tax and spend, and weak defenses, Reagan offers a vision of growth, individual freedom and military might as the new ideas of the 1980s. Unlike the Democrats, the GOP remains pro-work, pro-growth and pro-family; or, in other words, it is committed to America's "real values" and "true successes." The choice is clear: the Democrats or "America's Party." The image is the most potent one possible: the viewer's idealized image of themselves seen on multiple screens that Reagan unrolls in their minds. The images may not be "true," but the voters go for it because they want such imagery to be true for them.

Voter mobilization and coalition-formation through self-suggestive imagery are the object of this text. Reagan is presented indistinctly with many possible meanings in the Tuesday team's film. In turn, the film's many diverse audiences can construct their own satisfying gestalts from its symbolic narratives. The signifiers of power fuse freely with any signified, masking the real referents of 1984 America with the telereal signs of charismatic Reaganism. Like an automobile commer-

times, talking to us about what he's doing? Now he's not doing that for any other reason than to make real clear. And, if anybody has any question about where he's headed, it's their fault. Maybe they don't have a television," *New York Times*, Sept. 14, 1984, p. 12. Even the average voter "recognizes" that the television screen is today's public sphere, and, ironically, a necessary requisite for political participation.

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cial in which the buyer pieces together images of the car with his own dreams of speed, freedom and power to create his personal utopia in the commodity form, "The Film" allows every voter to compose his own perfect image of the leader.

The message of televisual political theater ultimately is made by and for the receiver. Each voter participates in producing, packaging and consuming his own ideal candidate for president from the multiple icons of charismatic power that campaigners represent as image from the alienated aspirations of the electorate. Successful campaigners must retune their ideological programs to fit these menus of images if they are to capture the majority. Although their polling/marketing knowledge is not yet totally foolproof, the imagewrights also know with increasingly high levels of certainty *what* different groups of consumers receiving the images *want* to produce and *why* in their symbolic consumption. The correct entres of power, vision, toughness, command, and compassion are taped on to the media menu with the professional knowledge that the viewing publics will "buy" them in their voting decisions. Hence, a mutliplex, polyvalent political ideology is co-prouced by the consuming public in a closely supervised setting at the television screen. With notions of freedom and popular choice inspired by corporate signatures, like "7-Eleven, Freedom Waiting For You," "Oldsmobile, Can We Build One for You," or "Pepsi, the Choice of a New Generation," voters as consumers legitimate this electronic mode of democracy as they ratify or reject the packaged charisma of electoral candidates with their votes.

From Party to PACS, Polls, and Personalities

The growth of television from the 1950s to the 1980s has completely transformed the rules of electoral politics in the United States. The ideals of a responsible party system for American democracy are disappearing in a still on-going party dealignment. A new inchoate electoral regime, predicated upon the extensive use of television as a mobilization, communication, and fund-raising structure, rapidly is taking its place. Whereas Weber saw the role of charismatic authority in American electoral politics as the rare exception to the rule of bureaucratic routines, televisual modes of electioneering coupled with the weakening of national party structures are turning charismatic challenges to party control into a new norm for electoral competition.

Under the old regime, war heroes or revolutionary figures had *real charisma*. Washington, Jefferson, Jackson, Lincoln, Grant, Teddy Roosevelt and Eisenhower became candidates on the basis of their extraordinary political stature or military heroism. In the society of the spectacle, however, *telereal charisma* is rationally produced through marketing techniques by self-selected candidates to legitimate their pretensions

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to power. In fact, military heroes, like Haig, Bush or even Glenn have proven unable to translate their military achievements into charismatic authority. Instead, like Reagan's stint with GE, Iacocca's corporate-produced charisma or Robertson's "700 Club" charisma are now perfect candidates for crossing-over into the presidential markets in America's telereal democracy. They embody personal, promising "American images" for viewers and voters to idealize themselves within. Beginning with JFK's dubious but aesthetically enhanced image as a war hero, serious author, and global statesman in 1960, and extending to Reagan's equally questionable symbolically intensified aura as a chosen redeemer for an America adrift on the dark seas of fear, pessimism and limits in 1980 and 1984, this new mode of charismatic authority is gaining leverage in America's democratic decision-making.

The candidate rather than the party is crucial, because the alienated aspirations of the public are invested in televisual heroes. The party is legally important to get on the ballot and as an important attribute of the candidate in some voters' minds. But, with the post-1968 institutional reform in both political parties, the candidate and his paid professional consultants are in command rather than the party bureaucracies. *Ad hoc*, single-purpose campaign organizations, frequently funded by a self-selected candidate's specialized political action committee, surface at the start of new electoral cycles to raise funds, hire professional consultants, conduct market research polling, and engineer a charismatic image for the candidate. With the approach of the primaries or general election, the candidate's campaign organization blitzes the vital symbolic themes that his polling has uncovered as central in the voters' minds. Here, PACs are vital organizational adjuncts for campaigning in the society of the spectacle. PACs serve a vital mobilization function by attracting financial support and professional manpower in issue-group politics. Likewise, candidate-centered PACs can immediately provide the institutionalized visibility and monetary backing that political parties once afforded candidates. Only now, candidates can self-select themselves as potential leaders, while winning financial backing and political clout from like-minded corporate, labor and issue-group PACs.[32]

Likewise, media-imaging and televisual symbol massaging target the issue sub-groups and demographic segments that precinct analysis, opinion surveys or televised spots have identified and/or created as critical voting blocs. Volunteers, specifically mobilized to aid the campaign's candidate, move people to the balloting stations, take exit polls as voters leave, and canvass voters by telephone, urging them to vote. Paid professionals or unpaid volunteers, the candidate's campaign or-

32. Ferguson and Rogers, *Right Turn*, *op. cit.*, pp. 114-227.

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ganization ultimately controls them both for the benefit of the candidate rather than the party. The candidate's stand on the issues, media appeals, symbol usage, and voter identification gradually are both dealigned from party loyalties —as Reagan's use of traditionally Democratic party heroes, issues, and symbols— illustrates. Coalitions, issue positions, campaign themes, electoral pledges emerge from opinion polls, symbol packaging, and PAC funding ties. Public opinion and electoral behavior research track the intricate psychosocial needs shared by the powerless voters, who accept the politicians' imagery and consume the theater of their own stylized activities. The politics of electoral charisma is the outcome of these interacting news media, campaign organization, and opinion survey discourses. It enables the voters, electronic journalists, campaigners, professional pollsters, and the candidates to circulate the charismatic sign values of electoral choice refining the alienated spirit of the public into a loose package of images that voters eventually consume.[33]

33. As Jamieson concludes, political ads play a critical system-affirming function: "Still, if political advertising did not exist we would have to invent it. Political advertising legitimizes our political institutions by affirming that change is possible within the political system, that the president can effect change, that votes can make a difference. As a result, advertising channels discontent into the avenues provided by the government and acts as a safety valve for pressures that might otherwise turn against the system to demand its substantial modification or overthrow. Political advertising does this, in part, by underscoring the power of the ballot. Your vote makes a difference, it says, at the same time as its carefully targeted messages imply that the votes that would go to the opponent are best left uncast. Political ads affirm that the country is great, has a future, is respected. The contest they reflect is over who should be elected, not over whether there should be an election. The very existence of the contest suggests that there is a choice, that the voter's selection of one candidate over the other will make a difference. Ads also define the problems we face and assure us that there are solutions. If there are no solutions a candidate would speak that truth at great risk," Jamieson, *Packaging the Presidency*, *op. cit.*, pp. 452-453.

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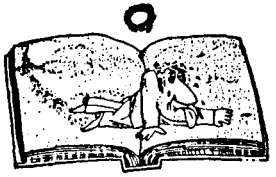

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The Left as the Counter-Culture of Modernity

Zygmunt Bauman

> *"At the end of this development the intellectuals of the opposition asked themselves in all seriousness: is there still a proletariat? Is there still a ruling class? Whereas they would have been more justified in asking: is there still an intellectual opposition?"*
>
> *"Short-term hopes are futile. Long-term resignation is suicidal."*
> Hans Magnus Enzenberger

The Left is characterized by its lack of humor. This has set it apart from other forms of opposition to capitalism, e.g., avant-garde art. The latter's irony, self-mockery, and playfulness was a *lèse-majesté* to the Left as much as it was to the priests of the establishment. *Épater-le-bourgeois* has never been a Left strategy, because the Left has treated *le bourgeois* seriously as the author of a project the Left thought worth fulfilling and as the hindrance to its fulfilment at the same time.

The Left was and remained until recently the counter-culture of capitalism. Etiologically it could only come into being once capitalist culture launched a program geared towards achieving a rational society. Logically, it made sense only by "taking capitalism on its word" — a demand to deliver on the capitalist promise. Liberty, Equality, and Brotherhood were capitalist passwords. The Left had nothing to add. It only took the capitalist program seriously and asked everyone else to do the same.

The Left was indebted to capitalism in a number of ways.

First, that one can change the world by relying solely on human resources.

Second, that the world can be improved by rational human intervention.

Third, that to do this it is sufficient to increase the material wealth at mankind's disposal, and to make nature useful, first by learning its se-

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crets, and then relating it to human needs and ignoring the rest.

Fourth, that as material wealth grows, so do the possibilities for happiness, understood as the lack of want, but also as freedom from natural necessity.

Fifth, that this freedom will promote liberty, equality and brotherhood among people and, given the possibility of this rational choice, people will select a way of life best suited to their needs.

Sixth, that the value of "really existing" societies can be measured by the degree to which liberty, equality and brotherhood have been attained, and the chances for their further growth.

Because it had borrowed all these capitalist ideas and treated them seriously, the Left had become a critic of capitalist practice. Eager to successfully complete the process, the Left questioned the qualifications of its current managers. Capitalist practice had to be rejected because it could not fulfill the capitalist promise, and it threatened to waste the opportunities opened up by the capitalist revolution.

The critique of capitalist practice had to be on two grounds — moral and rational ones. The newly attained material wealth had not been used wisely, i.e., it had not been used to promote liberty, equality and brotherhood. Capitalist administration of production generated far less wealth than could be achieved, and in sufficient quantities to put an end to poverty.

Thus, the Left critique of capitalist practice pointed out that the reproduction of economic inequality limits liberty (or allows only for pseudo-liberty) and as long as the profit motive determined the production of wealth, the use of resources and technological opportunities would remain erratic, wasteful, and irrational. In other words, the Left critique claimed that the capitalist administration of social production did not live up to the standards set by the capitalist revolution.

Disenchanted with the capitalist administration of social production, the Left looked for a more appropriate historical agent, better suited for the tasks on the historical agenda. For most of the Left, the industrial working class seemed the natural option.

A number of reasons spoke in favor of this — at least at the time. 1) As a historical agent, the propertyless working class had no track record and thus was not discredited. 2) The working class was rapidly growing to the point of eventually encompassing the nation as a whole. 3) Unlike other disaffected classes, industrial workers were subject to uniform rhythm and discipline, technically trained and organically tied to rational production. 4) They showed proclivities to militancy. Their often violent rebellion against the rise of capitalism could be eas-

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ily misread as resistance to capitalist administration. 5) For reasons of militancy, industrial workers had already been defined as the "dangerous classes" and a threat to capitalist order. Here the Left only accepted the dominant view. 6) Industrial workers were a particularly tempting choice, as they clearly needed the guidance of the educated elite, of which most Left critics were a part. Workers could be raised to the level of historical agency only by engaging intellectuals as supervisors of the historical process.

All these considerations have now turned into their opposites. Industrial workers are now the most rapidly shrinking part of the population. It is projected that within a generation they will be reduced to the size of agricultural labor at the beginning of this century. Employees who have displaced traditional industrial workers are transient, unorganized, scattered and unskilled — unlikely candidates to rule a rational society. Organized labor's militancy is now defensive in nature and particularistic in vision. Far from being a "dangerous class," organized labor has become the staunchest defender of law and order. Rather than listening to the spokesmen of reason, it has been seeking illumination from the entertainment industry.

The changes in the nature of industrial labor have not made today's capitalist society more rational or just. If anything, poverty and suffering are still increasing. But poverty is no longer associated with organized labor. It has become much less romantic and politically interesting. It is now a suffering that does not entail redemption but calls for more bureaucracy and — if heeded — this call would only strengthen the oppressive grip of the capitalist state. In addition, this new kind of poverty, the poverty of flawed consumers, sees the rich and powerful not as enemies, but as role models and as the measure of their own inadequacy. Thus, it is difficult to see the new poor as agents of historical transformation. The Left is reluctant to throw in its lot with this particular form of suffering. There can be pity and compassion, but no political identification.

To the extent that the Left seeks to retain its identity as the counterculture of capitalism, it finds itself without any historical agent to complete the capitalist project. This absence of a plausible agent creates an unprecedented situation. It is at the root of the present "disenchantment" and "loss of direction" or, more simply, the contemporary crisis of the Left.

There are two common reactions to this sense of crisis. The first is to dismiss this loss of direction as another case of middle-class intellectuals getting cold feet when confronted with successive spells of misfor-

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tune. Thus, it is claimed that organized labor's revolutionary potential is far from exhausted and that it must remain the benchmark of Left politics. Such a reaction is reinforced by the Left's collective memory. But even the most powerful collective memory is bound to weaken under the pressure of a prolonged input of negative experience, and difficult to explain away by readjusting old ways of thinking. It is unlikely, therefore, that this reaction, with its limited life-expectancy, will provide a firm foundation for a Left capable of engaging effectively with the crucial disabilities of contemporary Western Society.

The first reaction doesn't produce a unified politics. One possible politics is to translate loyalty to the working class as the historical agent to loyalty to organized labor. In practice, this means uncritically supporting organized labor, whatever its interests and demands may be, as "by definition" anti-capitalist. This may occasionally re-establish credibility during brief periods of trade-union militancy. In the long run, however, it is likely to reinforce the divisive "policy of closure" pursued by a class in retreat. Rather than contributing to solving social ills, this policy intensifies them. Whatever the value of this policy, its Left credentials are, for these reasons, in doubt.

Another offshoot of this reaction is a politics privileging an orthodox philosophy of history. If "really existing" workers do not behave according to the pattern this philosophy suggests, all the worse for "really existing" workers. Their deviation from the projected pattern may be easily explained in terms of ideological state apparatuses, police repression, consumerism, social democratic betrayals, bribes, or the weakening of Left intellectuals. As a temporary abnormality, the behavior of "really existing" workers is dismissed as a possible refutation of a policy grounded in the philosophy of history. In practice, this is a sectarian policy of retreat into ever smaller groups of faithful who reinforce their collective legitimacy by imputing to workers (as they should be and not as they are) their own middle-class spiritual tribulations.

Since life is short, and waiting for workers to change "in the long run" from "really existing" into "existentially real" has limited appeal for anyone but the most patient (and in revolutionary politics patience is suspect: it smells of treason), this politics leads to demands for shortcuts. Ever since the Russian populists — who, having found among the "people" more appreciation for the Tsar than for revolution, resorted to revolution "for the people" but not "by the people" — the politics under discussion occasionally ends up in terrorism. Unlike the Russian populists, the new terrorism is not necessarily

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aimed at emperors. Thanks to the modern media and the "global village" it has created, any act of spectacular cruelty now attracts the attention that only plots against kings once commanded. Apart from its moral repulsiveness, the trouble with terrorism as a "Left" policy is, of course, that however many personal problems it may solve, it can hardly promote traditional Left goals. If anything, it allows the capitalist state to mobilize popular cravings for law and order to reinvigorate the fading popularity of the interests its policy defends.

The second reaction is the very opposite of the first: it proclaims the "end of modernity" and the coming of "postmodernity." Accordingly, the times of "universal projects," of a world which made such projects plausible, are over. From this point on, however, the theorists of postmodernity split. Some dwell on the growing plurality of the contemporary world, on the autonomy of "language games," "communities of meaning," or "cultural traditions" which are impervious to objective evaluation since they themselves individually provide the ground of all authority that any evaluation may claim. Others do not feel obliged to refer to the changing world to justify a plurality of ideas. The difference between postmodernity and modernity appears to them as another chapter in the history of thought. They abandon the futile search for universal standards of truth, justice and taste, and modestly claim that there is nothing but our own conviction to justify our decision to pursue values we claim worth pursuing. The steadfastness with which we stick to our decision is all the more powerful for our realization that "history is not on our side," and others are unlikely to adopt values we cherish. We have neither material force nor arguments to make them change their mind.

In varying degrees, both forms of postmodernist theory are philosophies of surrender. Both resign themselves to the impossibility, or unlikelihood, of improving the world, aware of the powerlessness of critique in influencing other communities.[1] Occasionally, in the past, despair led to courage. This particular despair does not. The only courage which may be born of resignation is one feeding on the resilience in self-preservation.

As a philosophy of resignation and futility, postmodernism can

1. "Communities" here are left deliberately vague; they may mean other parts of the globe, other regimes, other states — but much of this pessimism regarding the prospects of the global proselytism can be traced back to the experience of this irrelevance at home, which is the price one pays for intellectual and cultural freedom from disdainfully indifferent powers-that-be. Political freedom is fast devalued, let us add, by the new dependence on market forces.

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hardly serve as the foundation for the Left's new self-identity. The Left-intellectuals' current flirtation with postmodernity can be accounted for by the desperation with which new inspirations are sought within a context which appears increasingly as a theoretical void. This romance of the Left with postmodernity, however, is bound to prove another case of unrequited love. Indeed, while condemning as futile the hopes that bourgeois values can ever be universalized, postmodern theory at the same time declares the futility of the Left. There is no conceivable way a realistic Left program could be patched together out of postmodernist theory. There can be no Left as a counter-culture, i.e., a positive and effective critique of neglects, drawbacks, and mismanagements in implementing the cultural promise of a better society, without the conviction that this cultural promise is viable and in principle realizable. There can be no Left without the belief that society can be improved and history brought to our side. There can be no Left without the idea that among different things, some are good and some are wrong, and that the first can be made more numerous than the latter. Postmodern theory is an invitation to intellectuals to make the best of their freedom bought at the price of irrelevance. Whatever else the Left can be, it cannot, by definition, be irrelevant.

This does not mean that postmodernist theory, in its acceptance of contemporary society as irreparably plural and exclusive of any "foundation" or "meta-narrative," cannot breed a radical critique. It does mean, however, that not all radicalism is Left. The radicalism inspired by the postmodernity debate is an aesthetic radicalism: a radicalism of self-expression and self-affirmation, dictated by the awareness that all constraints have been removed from action, now subject solely to decisionist logic. Left radicalism is, first and foremost, a moral radicalism. It is addressed to objective reality and is conscious of its needs. It is subject to a goal-directed logic based on values. This action is self-monitored by its ability to promote objectively viable values. The Left's moral radicalism cannot be rebuilt using the postmodernity debate as a foundation.

If these two responses are either backward-looking or unpromising, it may be advisable to look for a third one. This third response is the reconstitution of the Left critique as the counter-culture of modernism and may avoid the drawbacks of the other two, while inserting the Left in the most crucial moral issues of Western society today.

A "counter-culture of modernism" differs from a "counter-culture of capitalism" in several respects. The counter-culture of capitalism was predicated on the possibility of the emancipation of labor from

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capital. It saw present and future society the way capitalism did: as a society whose members were primarily engaged in labor, in a society organized around the task of replenishing the labor supply (productive relations proving their rationality by promoting the proliferation of productive forces). This task, the counter-culture of capitalism maintained, was ill-served by capital. Realizing the first task introduced an auxiliary task: removing capital from the administration of the productive process and replacing it with another version of the self-administration of labor.

The unanticipated effect of Left pressure and of the politics of industrial labor it generated, turned out the be the very opposite of what had been expected. Instead of the emancipation of labor from capital, what happened was the emancipation of capital from labor. Today capital depends less and less on labor for its reproduction and growth. Increased investment means less labor, and greater profits are achieved through less labor. Instead of engaging the rest of society as producers or servants of the productive process, capital today engages society as consumers or servants of consumption. The most obvious consequence of the changed mechanism of the reproduction of capital, and of the new form of systemic domination is the obsolescence of the self-management of producers as a valid alternative to the present system. There are, however, other less self-evident consequences.

For the revelation of those other consequences, the Left is indebted, as so often in the past, to the system's political administrators. They were the first to draw practical conclusions from the newly acquired freedom of capital from labor and the newly acquired freedom of politics from the task of recommodification of labor. The present upsurge of neo-conservative politics, the reappearance of notions which the previous network of class-based checks and balances rendered for many a decade unmentionable, indicates that such conclusions have been drawn. In pursuing these new policies without fear of imminent backlash, neo-conservative administrators assume the irreversibility of the process leading possibly to a complete emancipation of capital and marginalization of that labor which capital may need, residually, for its reproduction. In assuming this they may feel again that history "is on their side." This feeling generates an otherwise difficult to obtain political boldness which the ruling classes have not exhibited in a long time.

The Left should be indebted to neo-conservatism for exposing values in urgent need of protection — values with which the Left has been hardly concerned with, until the new dangers have made them visible.

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There is no need to ask what the hammer is, Heidegger used to say, until it is broken. Some vital facets of that society brought about by the bourgeois revolution remained invisible to the Left as long as they remained "unproblematically given," and taken for granted. Under the neo-conservative threat, they have been made problematic. What are these new problems?

To start with, the poor are less and less important to the reproduction of capital in their traditional role as the "reserve army of labor." They are no longer the object of concern for the twofold political task of recommodification of labor and limitation of working class militancy. The previously taken-for-granted principle of social responsibility for the survival — and, indeed, the well-being — of that part of society not directly engaged by capital as producers (a principle resulting from an encounter of Left moral pressures and capital's instrumental needs), has suddenly come under attack. In view of the progressive emancipation of capital from labor, the reaffirmation of the principle cannot be left to the rationality of the productive process. The logic of economics cannot be viewed as an ally. It has to be re-negotiated and re-imposed by appeal to those aspects of the counter-culture that capitalism tended to underemphasize: political democracy as distinct from the self-management of producers.

Without this new anchorage, today's poor are under a threat worse than the misery of the early capitalist work-houses. Those were at least institutions of "social rehabilitation" in terms of the requirements of rising capital in acute need of a rising labor force. Today, the rehabilitation rhetoric in which welfare transfers are wrapped may only be used, in view of its phoniness, as a device to confirm the inadequacy of the poor and their ineligibility for social assistance. The same Social Darwinist rhetoric which once served to reforge small producers into disciplined industrial laborers, today firmly and irreversibly stamps the poor as stigmatized, permanent outcasts of the consumer society, undeserving of citizen status. It is unlikely that welfare transfers will be eliminated. The obsessive public ritual of counting "the costs of welfare" immediately translated as the "taxpayer's sacrifice" is a tool used to raise a wall of incomprehension and estrangements between the "fit" and the "unfit," and deepen the stigma attached to poverty. Quite real, however, is another threat: that of welfare transfers becoming instruments of disenfranchisement and the withdrawal of citizenship rights for that rising minority of the consumer society who cannot prove their citizenship in the only way a consumer market admits. The reality of such a threat has been documented by the legally enforced

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interference of welfare agencies with the private and family life of their "clients": an imposed "infantilization" of welfare recipients through denial of their rights to autonomous decision-making, and the dense network of surveillance which consumes an ever growing slice of welfare funds. Thus the poor are not just growing poorer. They are being made into a deviant category: a section of the population defined as a separate entity by the withdrawal, or at least suspension, of political and personal rights which were thought to be the lasting and universal achievement of modernity.

The poor are the first to experience the threat to democracy and citizenship rights — and to experience it in the most tangible form. But they are not the only ones under threat. The political arena is in the process of acquiring a new role in the reproduction of the social system. Its function in systemic reproduction was, throughout most of the modern era, confined to guaranteeing the general conditions for the smooth reproduction of capital-labor relations. With this function performed, the perpetuation of the structure of domination could be entrusted to the mechanisms built into the capitalist relations of production. Capital, engaging the bulk of the population as producers and servants of production, could be relied upon as the major drilling and disciplining force. Emancipated from labor, capital cannot and need not carry on this function. The reproduction of the structure of domination becomes directly the matter of law and order, rather than indirectly the matter of the "work ethic." Systemic reproduction, in other words, has become more than ever before the responsibility of the political state.

Under these circumstances new pressures come to bear on political democracy and the modern form of public life in general. Indeed, with the new and enhanced function of the state, the political game cannot be left to "democratic" politicians. Considerable freedom of political opinion and organization, which virtually all interests enjoyed through a better part of modern history (the quality of modernity which the Left came to see — or rather not see — as unproblematic), was more than tangentially related to the relative innocuousness of political conflict in a system where domination was guaranteed primarily through non-political means. Too much hangs on political conflict today to expect this situation to last. Two kinds of assaults on political democracy as we know it are to be expected and, indeed, signs of both are already discernable.

First, there will be attempts to preserve the facade of political democracy while draining the substance of politics from public forms of

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democratic life. This can be seen in the shifting of real decision-making from ostensible democratic institutions to government bureaucracies unaccountable to democratic control. The growing hysteria around "state secrets" is instrumentalized to remove the daily work of the state from control by its subjects. This is facilitated by technological means presently at the government's disposal, which allow the most seminal decisions affecting the citizen's survival to be taken and implemented before democratic institutions have a chance to intervene. For example, modern warfare no longer requires the mobilization of popular emotions for waging wars. Indeed, it does not even require informing the population that they are in a state of war. Especially in the case of great powers, the leverage provided to state secrecy by the "external threat" and the procedural patterns it breeds, is exaggerated by relegating all but the most trivial political decisions to state security.

Second, the range of issues open to discussion within the democratic process is shrinking. This is brought about by proclaiming a growing number of radical attitudes out of the bounds of democracy; by lowering the threshold of opinions considered subversive;[2] privatization of a growing number of functions previously performed by the state;[3] and problematizing of the visible side of the democratic process by reducing it, with the help of technological media, to popularity contests where issues evaporate in public relation exercises.

One of the consequences of the emancipation of capital from labor may be, therefore, the even more crucial emancipation of political power from democratic institutions. This is all the more important given the state's enhanced destructive powers and the deeper penetration by state bureacracies within spheres hitherto relegated to private life.

The severity of the first factor cannot be overestimated. We live under the shadow of mass destruction. This has rendered possible the end of history and of the human race. As such, it goes beyond the scope of a traditional politics meant to deal with everyday problems of human welfare. But the existence of weapons of mass destruction is also crucial for internal politics. As the ultimate weapons permitting the total annihilation of "external enemies," they also allow the state to become emancipated from control by its own society. This is the deci-

2. This stratagem is particularly attractive as it becomes a self-fulfilling prophecy unable to obtain democratic representation. These opinions tend to become "subversive," as any attempt to express them can only take "extra-democratic" forms.

3. Ostensibly justified as efforts to stengthen competition and minimize waste, the trend clearly has an antidemocratic edge, as it effectively removes vital aspects of social life from control by political-democratic means.

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sive link in the chain of factors which threaten the survival of the democratic achievements of modernity. No definite progress can be made by the Left without the destruction of the weapons of mass destruction. This is not merely another concern of the Left, but the key to the viability of its identity as the counter-culture of modernity.

The second factor which renders emancipation of political bureaucracies from democratic control particularly sinister is the growing penetration of the "private" sphere (Habermas' "life-world") by the state. This penetration, of course, further strengthens the autonomy of the state: the deeper the penetration, the less realistic are the chances for democratic institutions to recapture those areas of control from which they have been evicted. Thus, in addition to having an instrumental political relevance, this penetration also has moral ramifications and has to be resisted on both accounts.

Resistance to these developments is unlikely to generate a mass movement because the encroachment on individual autonomy and subjective freedom by state bureaucracies has its counterpart in solutions to the problem of autonomy provided by the market. In the same way that early capitalist conflicts about control over the producers' body and spirit were redirected and neutralized as conflicts over the distribution of surplus value, today the energy generated by the drive towards individual autonomy and political subjectivity is redirected and neutralized as a need to construct individual uniqueness and authenticity out of mass-produced commodities supplied, in ever growing variety, by the market. In early capitalist societies organized around production, every call for autonomy tended to be translated immediately into increased pressure on the redistribution of surplus value, while in the present consumer society calls for autonomy tend to be translated into intensified preoccupation with the opportunities offered by the market. This circumstance renders the Left critique of individual autonomy as self-defeating today as it was in the past. Contrary to its intention, it ends up contributing to the retrenchment of the system it wished to reform.

What ultimately feeds the intense preoccupation with market varieties of autonomy is the politically-induced limitation of individual freedom. Because of this, members of the consumer society seek redress in the market. Thus, enhancement of individual autonomy may be better attained by attacking the sources rather than their effects. Rolling back the bureaucratic invasion of the life-world may relieve the pressure to seek the kind of autonomy that the market can provide.

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All of today's critical issues point to the same central problem: the threat of emancipation of the political state from democratic control, and the resulting freedom of state bureaucracies to colonize the everyday world, thereby rendering their own domination permanent. This central problem defines the Left today.

Focusing the Left critique on the political state is not exactly a new idea. Indeed, before the emancipation of capital from labor reached its present proportions, this strategy was largely misdirected and rightly criticized by Gramsci as "statolatry." Gramsci's critique pointed out that the domination of capital was grounded in a "civil society" colonized by capital by relegating civil society to, first and foremost, the reproduction of labor. Now, however, civil society is increasingly colonized by the state as the sphere of reproduction of consumers, i.e., men and women whose interests in autonomy are permanently redirected to fit the needs of the market.

This new situation necessitates the redefinition of the Left as the counter-culture of modernity. With the emancipation of capital from labor, the gap between the potential and the reality of the bourgeois revolution can no longer be located in the exploitative role of capital. The material wealth made available by capitalism does not lead to the expected expansion of democracy and personal autonomy because of the parallel, but not inevitable, emancipation of the political state from public control, and the weakening of local sources of resistance. If the Left as the counter-culture of capitalism located the causes of the failure to realize the promises of the capitalist revolution in capital's control over production, the Left as the counter-culture of modernity should seek such cases in the failings of political democracy and personal autonomy.

The emphasis shifts following seminal transformations in the social system. When it engaged society in the role of producers, capital was the very force seeking the expansion of both political democracy and individual autonomy. Today capital is, at best, indifferent to both; it may well consider them costly nuisances. Thus, today democracy and autonomy cannot be taken for granted. They must be consciously and stubbornly defended.

The Left as the counter-culture of modernity must take democracy and autonomy seriously — not as useful but dispensable instruments in the reproduction of a certain structure of domination, but as values in their own right; not as means to safeguard the reproduction of capital to boost economic efficiency (at some point, the interests of democ-

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racy and autonomy may come into conflict with the requirements of efficiency), but as indispensable conditions of that emancipation which brought the bourgeois revolution described as Liberty, Equality, and Brotherhood.

Unlike the counter-culture of capitalism, the program of the counter-culture of modernity does not unequivocally privilege any particular social group as its primary or "natural," target. In this sense, it is a program without an easily identifiable "historical carrier." As the counter-culture of capitalism, the Left has long lived in the shadow of an historical agent. An artifact of the program, this agent lulled the Left into forgetting its origins and legitimation. More often than not, the conclusion turned into the premise and the Left identified itself as a collective spokesman for the class to which it imputed its own concerns. Memory of those long years make today's Left uneasy. It has yet to learn to live without an historical agent. It must see through what today may be only a delusion, straight into the only firm foundation of its purpose: the conviction that the values promoted by the bourgeois revolution need to be defended and can be defended only by exposing the mechanisms which prevent their fulfillment.

Living without an historical agent has its discomfiting aspects. It also has its virtues. Making shortcuts unattractive is one of them, maybe the main one. Revolution is a shortcut in its purest form: an attempt to force history where the agent is not ready to take it (if it was, revolution would not be needed). Revolution is hence an act of violence on history and on its assumed agent. This is what makes the shortcut morally odious and ineffective as the means to bring history where it was intended to be brought. In history, most shortcuts appear to be *cul-de-sacs*.

Living without a hope for a shortcut is another thing today's Left has to learn. Indeed, to repeat Enzensberger's motto: short-term hopes are futile and long-term resignation is suicidal. But the virtue of living without an historical agent is that the futility of short-term hopes does not lead to long-term resignation. Resigning short-term hopes saves long-term ones from futility.

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*The Metamorphoses of Natural Law: On the Social Function of the Pre-Bourgeois and Bourgeois Foundations of Law**

Stefan Breuer

"*De jure naturae multa fabulamur*" — after 450 years, Luther's statement has lost none of its original validity.[1] After a brief pseudo-renaissance following WWII, one now hears far less in legal theory about natural law, which appears finally to have fallen victim to what Weber early in the century characterized as "a progressive decomposition and relativization of all meta-legal axioms" — a destruction resulting partly "from legal rationalism itself," and partly "from the skepticism which characterizes modern intellectual life generally." Law today, wrote Weber, "is all too tangibly (in the great majority of its determinations, and especially in many which are particularly important in terms of principle) revealed to be both the product and the technical medium of a compromise of interests," so that it can no longer claim that aura of legitimacy which natural law had bestowed on the great legal systems of the past.[2]

Nevertheless, politics today talks of natural rights and natural law axioms play a role in ideological disputes. They dominate debates about "fundamental values" and "inalienable rights." They define constitutional-political conflicts and scholarly discourse concerning "legitimation crises." Minorities in revolt act in the name of a "natural right to resistance," such as Marcuse claimed for the civil rights move-

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1. Martin Luther, *Werke. Kritische Gesamtausgabe*, (Weimar, 1883 ff.), vol. 56, p. 355.
2. Max Weber, *Economy and Society*, (Berkeley: U.C. Press, 1978), pp. 874-5.

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ments of the Sixties.[3] Tribunals, international conferences and declarations concerning fundamental human rights follow one another, dictators vie among themselves to have their humanism and liberality certified by independent investigating committees. Hardly a state today would dare pass a constitution failing to present it as a true and inviolable guarantor of human rights; scarcely a president, chancellor, general secretary or junta chief can be found who does not from time to time castigate in flaming words the fundamental rights violations of other countries, while defending his own practice. Natural law has become a central ideological weapon in the daily political struggle, one that, as Wolf remarks, arouses ambivalent feelings, "a 'problematic' sense of something that cannot be pinned down, eluding every attempt at unambiguous definition, resisting all will to classification."[4]

The history of natural law does not remove this uncertainty and perplexity. For twenty-five centuries in the West, one version of natural law has been replaced by the next. In the name of natural law, social reformers and ancient philosophers protested against inequality and the predominance of the rich; in the Middle Ages, heretics, manual laborers, and peasants fought for the 'divine law' and the laws of the "common man"; in the 17th and 18th centuries, the revolutionary bourgeoisie demanded guarantees of indivisible and inalienable human rights. Yet natural law was by no means only, as Weber supposed, the "specific legitimation-form of *revolutionarily*-created orders."[5] As Kelsen in particular emphasized, natural law could operate just as well *conservatively*, as an ideology *par excellence* for existing forms of domination.[6] In the name of natural law, Aristotle polemicized against developments tending to level away the distinction between master and slave, a distinction he viewed as natural; Cicero justified domination of the "*summi virtute et animo*" over the weak, whose will it ultimately was to obey; and the Stoics identified (as did later the Christian Church) natural law with the positive law of the *status corruptus*, including its social divisions and compulsory order of established sanctions.

From slave trading to the Nazi regime, from castration of choristers to the regulation of dress in the absolutist welfare-state, there has been no form of domination or oppression which has not been legitimated

3. Herbert Marcuse, "Repressive Tolerance" in Wolff/Moore/Marcuse, *Critique of Pure Tolerance*, (Boston: Beacon Press, 1965), p. 116.

4. Erik Wolf, *Das Problem der Naturrechtslehre*, (Karlsruhe, 1964), p. 2.

5. Weber, *Economy and Society, op. cit.*, p. 867.

6. Cf. Hans Kelsen, *Reine Rechtslehre* (Vienna, 1967), p. 435.

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by natural law; and no revolutionary movement which has not praised itself under the banner of "natural law," however repressive its own practice. The history of natural law teaches us what various groups, classes, or individuals at different times have held to be the unchangeable nature of things — though not always why. Topitsch has therefore concluded: "Theories of natural law essentially represent systems of circular reasoning and empty formulae which can be used to defend or attack every imaginable, existing, or desired legal and social order; they owe their undeniable historical impact to this unlimited manipulability."[7]

Against naive attempts at an ontological or communication-theoretical revival of natural-law normativism, historical relativity has a beneficially sobering effect. Nevertheless, sociological relativism offers sufficient reason to confront skepticism itself with a measure of skepticism.[8] Perhaps natural law, besides the countless illusions and pseudo-truths it has doubtless produced, contains a certain reality, a developmental logic revealing not only something about the particular interests of groups or individuals, but also about elements which (to use Weber's expression) have attained "universal cultural significance." Didn't natural law, with its specific anthropology, lay the foundations for the legal subject, private autonomy, and the legal transaction? Did it not, in both criminal and public law, first make possible "guilt" and "sovereignty," thus proving itself to be the "forerunner of modern legal theory and scholarship," after the Corpus Juris the "strongest force behind modern legal development *tout court*?"[9] Didn't natural law, with its central abstractions such as "freedom," "equality," "man," "will," etc., step towards that *universal* process of formalization, rationalization and 'normalization' which begins with grammatical rules, passes over into norms and ends with purposes of 'national defense?'[10] Is it not one of the most important media through which the rationalization of political, legal and religious institutions takes place, the totalization of that "specifically structured 'rationalism' of Western culture,"[11] which has

7. Ernst Topitsch, *Sozialphilosophie zwischen Ideologie und Wissenschaft*, (Neuwied, 1971), pp. 36 f.

8. G.W.F. Hegel, *Lectures on the Philosophy of History*, vol. 2, (London-New York, 1963), pp. 329-330.

9. Franz Wieacker, *Privatrechtgeschichte der Neuzeit*, (Göttingen, 1967), p. 265.

10. Georges Canguilhem, *Das Normale und das Pathologische*, (Frankfurt- Berlin Wien, 1977), p. 168.

11. Max Weber, *Protestant Ethic and the Spirit of Capitalism*, (New York: Charles Scribner's Sons, 1958), p. 26.

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intensified to such a degree that it no longer needs its natural-law crutches? Luhmann answers 'yes.' In his view, both the hierarchization of legal sources which characterizes natural law and the notion of law's divine creation allowed law to appear contingent, as being different, thereby permitting a "highly risky restructuring of the foundations of law ..., one whose significance initially remains hidden, namely the transition to a structurally-variable law which is determined within society itself."[12]

Yet (as Luhmann also notes) natural law cannot be reduced merely to this dynamic, "progressive" characteristic. It mobilizes by reaching back to principles of invariance and unchangeability, it limits change in decisive respects: through the concept of nature. Luhmann sees in this typical natural law strategy a "symptom of insufficient confidence in the effective and adequately complex organization of social processes," a "denial of the independent achievement of the social system in the constitution of law," a denial which is reasonable (and unavoidable) so long as social responsibility for the law could not be taken over.[13] Is natural law really only a matter of a *denial* of the primacy of society? Or could it be that natural law, in its insistence on a pre-existent order (not resting on merely posited laws, but quite simply, "natural") contains elements which transcend Western rationalism and society's absolutist claim; elements pointing to other, "non-rational" forms? Isn't the history of natural law also the history of these deviating, "natural" forms of human existence —forms presupposing different structures, even if (from the perspective of the victorious rationalism) it can only be seen as decline? And what should a natural law look like? A social history of "world views" or projections, which define the matrix of social organization and of various forms of thought, each in its own way claiming universal validity.

I

The most intriguing thing about the history of natural law is the tension between nature and law. Although both moments demonstrate an extraordinarily wide spectrum of interpretive possibilities (which Wolf has worked out with great sensitivity and insight[14]), their fundamental antithesis is obvious. "Nature," synonymous with primordiality,

12. Niklas Luhmann, "Positivität des Rechts als Vorraussetzung einer modernen Gesellschaft," in *Ausdifferenzierung des Rechts. Beiträge zur Rechtssoziologie und Rechtstheorie*, (Frankfurt, 1981), pp. 113-153, p. 122.

13. *Ibid.*, pp. 120 ff.

14. Cf. Wolf, pp. 27ff., 125ff.

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uniqueness, genuineness, constancy, etc., forms the counter-category to "law," that which is posited, constructed, or simply 'made up'. Already for the Sophists, the concept "from nature" (*physei*) stands for something autarchic, something which has grown and become, which would establish and maintain itself through its own power. "By law" (*nomo*), on the contrary, means an order which (through tradition, compulsion, or decision) is imposed on someone, implying more or less a violation of nature. It is true that, for Plato, the concept of nature assumes a metaphysical character (since it is sublimated into an idea). It stands for that which *truly* exists, in contrast to which law and the state are only appearance. For Aristotle, nature is identical with "*physis*," the teleologically-structured striving of matter ("*hyle*") towards the "*eidos*," and man himself is part of this nature. For the Stoics, the world is a cosmos ordered by reason, and the state of nature is synonymous with the "Golden Age," which man lost through his greed and selfishness. Christianity, finally, merged this theory with Biblical notions of creation and the myths of Paradise and the Fall, and understood the post-lapsarian legal/state order as "*poena et remedium peccati*." In all these variations, natural law is an intrinsically hierarchical concept, one in which nature assumes the role of standard or guiding principle of law.[15] As Spaeman writes: "'natural' always means: that which exists without having been posited by human practice. This thing which exists is, in relation to the human life nexus, not just something indifferently "other," something merely drawn upon as contrast; rather, it is the constantly-presupposed condition of man's very existence. And, indeed, it is presupposed in several senses. First, in the sense of something which has always been here, before we are here and act. And secondly, that which is already here has the character of 'arche,' of the powerful beginning, which has already decided in advance about the possible playing room for what can happen or be done ... The natural as such is that which is *not* made by man. But everything which has been made is also natural, in a way that must be more exactly defined. Every making can only be a transformation of that which was already there. And, indeed, in such a way that this process must conform to the structure of that which is, since the structures which are produced have as their persisting presupposition the sub-

15. Cf. Felix Flückinger, *Geschichte des Naturrechts*, vol. 1, 1954, pp. 107ff., 130ff., 191ff., 284ff.; Hans Welzel, *Naturrecht und materiale Gerechtigkeit*, (Göttingen, 1960), pp. 15 ff., 21 ff.; Ernst Troeltsch, *Aufsätze zur Geistesgeschichte und Religionssoziologie*, Gesammelte Schriften, vol. IV. (Tübingen, 1925), pp. 125 ff.

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strate underlying it, which is itself already structured."[16]

This predominance of nature in ancient and Christian natural law is *not* true for the Enlightenment's law of Reason. With this autonomous law, the hierarchy is unmistakeably reversed. "Nature" is transformed from something which had governed and set limits into something which is displaced and non-essential. "The unification of freedom and necessity," as Hegel asserts in his lecture on Natural and State Law (1818/19), "is not produced by nature, but by freedom. Natural things remain as they are, they have not freed themselves from the law in order to make laws for themselves. The spirit, however, tears itself free from nature and produces its own nature, its own laws. Thus nature is not the life of law."[17]

The idea of a "state of nature" still held a central strategic position in the 17th and 18th centuries contract theories since it was important for the legitimation of the rising possessive market society. But the "nature" of bourgeois natural law has nothing in common with that of the ancient world or of medieval Christianity. It is no longer the *hypokeimenon* of all things, the living nexus of all individual substances, which realize their form in their movements, thereby obeying a uniform purposefulness. *This* nature is mere *res extensa*, an in-itself indeterminate substrate of the rational forms of *res cogitans*, the self-grounded rationality of the modern age. While a citizen of the ancient world knew himself to be part of a comprehensive order in which nature appeared to have given all to everyone (*natura dedit omnia omnibus*), so that only a proper distribution of these gifts was required to achieve the goals of nature, this order has been destroyed for the citizen of the modern age. Given the chaos he encounters everywhere, modern man can no longer content himself with the mere administration of the goods which either were present before he arrived, or were given simultaneously with him. Rather, he must renew the original creative situation *vis-à-vis* unformed matter, he must compensate for the initial "minimum of ontological disposition" with a "maximum of constructive potentiality."[18] Scientific and governmental absolutisms assume the heritage of theological absolutism, whereas the earlier absolutism had merely contemplated a pre-established order, the later forms see as their mission the *production* of order. History becomes the history of

16. Robert Spaemann, "Natur", in *Handbuch philosophischer Grundbegriffe*, vol. 2, ed. H. Krings, et al. (Munich 1973), pp. 957 ff.

17. G.W.F. Hegel, *Philosophy of Right*, (Oxford University Press, 1962), p. 20, sec. 3.

18. Hans Blumenberg, *The Legitimacy of the Modern Age*, (MIT Press, 1983), pp. 181 ff.

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this production, the history of an "enormous labor" (Hegel), in the course of which the spirit liberates itself from the state of nature in order to produce in the law and the state a reality suitable to it. The law, as Hegel would declare at the high point of modern natural law theory, is the "realm of realized freedom, the world of the spirit brought forth from out of itself, as a second nature."[19]

II

Society as the objectification of spirit sums up modern natural law theory. But for historical materialism, "religion, family, state, law, morality, science, art, etc., ... are only *particular* modes of production,"[20] production conceived not merely as objectification of something spiritual-immaterial, but rather as a metabolic exchange between man and nature.[21] However, Marx's approach belongs to those abstractions which "taken by themselves, isolated from actual history, are utterly without value."[22] The approach requires historical concretization, whereby the passage from abstract to concrete does not leave the original starting point untouched. Proceeding from the general assumption that "men must first be capable of surviving before they can 'make history,'" that they must therefore be productively active,[23] Marx distinguishes two forms in which this activity can take place. "In all forms where landed property rules, the natural relation is still predominant. In those where capital rules, the social, historically-created element [will predominate]."[24] This distinction does not imply that, in the one case, forms are exclusively dominated by "natural relations," while in the other case forms would be exclusively socio-historical. Marx emphasizes that, in the first case, the dominance of the "natural relation" was "only possible with a certain degree of development of material (and therefore also intellectual) productive forces," and thus was itself subject to historical changes;[25] and that in the second case the dominance of the socio-historical element by no means excluded the

19. Hegel, *Philosophy of Right*, *op. cit.*, pp. 20-21, sec. 4.

20. Karl Marx, *Economic and Philosophic Manuscripts* in *Collected Works*, vol. 3 (London: Lawrence and Wishart, 1975), p. 340.

21. Karl Marx, *Capital*, vol. 1 (New York: International Publishers, 1975), pp. 177 ff.

22. Karl Marx and Friedrich Engels, *The German Ideology* in *Collected Works*, vol. 5, p. 37.

23. *Ibid.*, p. 41.

24. Karl Marx, *Grundrisse*, (London: Penguin Books, 1973), p. 107.

25. *Ibid.*, p. 502.

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existence of a "natural relation" — indeed it actually presupposed such a relation.

The distinction characterizes the fundamental break which separates pre-capitalist from capitalist society. Disregarding the manifold forms in which the former appear — Marx's oriental, ancient, and Germanic or feudal formations — they all share a basic structure which justifies one and the same mode, for which Marx unfortunately did not supply a name — due to the difficulty of expressing in a *single* concept the intersection of "natural relation" and socio-historical change which typifies this mode.[26]

Marx writes that "the *unity* of living and active men with the natural, inorganic conditions of their metabolic exchange with nature" is characteristic for the "*pre-bourgeois* relation of the individual to the objective conditions of labor" — a unity which may well be modified by the historical process, but which only "in the relation of wage labor and capital" is replaced by the complete "separation of these unorganic conditions of human existence and this active existence."[27] The "natural conditions of production," within which labor remains bracketed in pre-capitalist production formations, are of a double nature: specifically, of "1) a subjective and 2) an objective nature. The producer finds himself a member of a family, tribe, etc. — which then, through intermingling with and opposition to others, adopt historically varying forms; and, as such a member, he puts himself into a relation with a specific nature (here still meaning: earth, ground, and soil) as the inorganic being of himself, as the condition of his production and reproduction."[28] By this Marx meant, first, that production in natural communities is production by individuals who live in an already-established community and whose production is directed towards the reproduction of this pre-established relation; the development of pro-

26. While Marx in *The German Ideology* still tended to use "*Naturwüchsigkeit*" in contraposition to "capitalism" (cf., e.g., *Marx-Engels-Werke* vol. 3, p. 60), in the *Grundrisse* he generally reserves the concept "*naturwüchsige Vergesellschaftung*" for the "*naturwüchsige Stammgemeinschaft*," i.e., segmentary societies. To characterize all forms of pre-capitalist society, Marx uses the formula: "*naturwüchsige*," or, rather "more or less historically developed." (cf. *Grundrisse*, *op. cit.*, pp. 472, 485, 486, 496, etc.). The historical element, which comes through in the German term "*naturwüchsig*," cannot be captured in English. An alternative solution would have been to use Weber's concept of "traditional social structure," but this would have resulted in the loss of the field of associations contained in the correlation of "natural law" and "natural conditions of production."

27. *Ibid.*, p. 488, 489.

28. *Ibid.*

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duction thus remains restricted to the "*reproduction* of *presupposed* — more or less natural, or perhaps also historically developed, but *traditionally* developed — relations of the individual to his community, and a *specific, objective* existence which has been *pre-determined* for him, both in relation to the conditions of labor, as well as with respect to his fellow workers, fellow tribesmen, etc."[29] Secondly, production remains bound to objective nature or earth as the "original instrument of labor, both laboratory and repository of raw materials. The individual simply accepts the objective conditions of labor as his own; relating to them as the unorganic nature of his subjectivity, as that within which this subjectivity realizes itself; the main objective condition of labor does not itself appear as a product of labor, but as *nature*."[30]

Lukács subsumed under "natural social structure" all those forms in which "the natural relations — both in the 'metabolic process' between man and nature as well as in the social relations of men to one another — have the upper hand."[31] These definitions in no way dissolve "culture" into "nature," or transform "human history" into a mere continuation of "natural history," which are distinguished, according to Marx's familiar observation, by the fact that men made the former, but not the latter.[32] "Predominance of natural relations" does not mean an absolute determination of production and society by physical, biological, or geological condition, if only because society itself is part of the "natural conditions of production." What this concept *does* mean is that the social subject's production is not sovereign over objective and subjective nature, but must adapt and conform to conditions already in existence. As Marx notes at one point: "In his production, man can only proceed like nature itself, i.e. he can only al-

29. *Ibid.*, p. 487.

30. *Ibid.*, p. 485.

31. Georg Lukács, *History and Class Consciousness*, (MIT Press, 1971), p. 233. The term "*naturwüchsige Vergesellschaftung*" can be found on p. 247.

32. Cf. Marx, *Capital*, vol. 1, p. 373. Engels, however, *does* tend towards such a conception. In *The Origin of the Family, Private Property and the State*, he conceives of the "*naturwüchsige Gruppierung*" as a form exclusively based on natural foundations (blood relations), and allows society, history, and civilization to begin with the state: cf. *The Origin of the Family: Private Property and The State*, (New York: International Publishers, 1972), p. 217 ff. While for Engels (here in agreement with Morgan) "*naturwüchsige Vergesellschaftung*" excludes relations of domination, we utilize the term for all societies based on the "interaction of man with his natural conditions of production that belong to him, as his own, as conditions presupposed along with his own existence;" and according to Marx this includes "relations of slavery and serfdom" or the "master-slave relation" (cf. *Grundrisse*, p. 491, 489-490, 501).

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ter the form of materials. Nothing more. In this work of formation he is constantly supported by the forces of nature. Thus, labor is not the sole source of the use-values produced by it, of material wealth. As William Petty put it, labor is its father and the earth its mother."[33]

There is history within natural societies; forms develop through which both objective and subjective conditions of production are modified. The "productive forces" in the natural formations have a broad spectrum of possibilities, ranging from hunting and gathering to the most differentiated forms of handicraft. Along with these, however, there are environmental conditions, forms of consciousness and systems of meaning, which by no means simply spring forth as "reflections" of the immediate labor-process, but which are determined by the *totality* of circumstances. Finally, there are the historical vicissitudes of wars, social inequalities, and religious or political associations. Wherever production is determined by natural conditions of production "these various forms of relation of the group or tribal members to the ground and soil of the tribe — to the earth upon which they have settled — depends in part on the natural characteristics of the tribe, in part on the economic conditions under which it really behaves as possessor of the ground and soil, i.e., appropriates its fruits through labor, and this itself will depend on climate, physical composition of the soil, the physically-conditioned manner of its exploitation, relations to enemy or neighboring tribes, and changes brought about by migration, historical experiences, etc."[34]

Natural social structure is characterized by two things. First, a specific mode of production, which while it indeed slowly reshapes and modifies the natural conditions of production, nevertheless remains immutably bound to objective nature, and the experience and needs of subjective nature, i.e., use-value production. Marx writes that "great developments can take place here," yet he immediately adds: "within a fixed range. The individuals may appear great. But free and full development (either of the individual or of society) is inconceivable here, since such development stands in contradiction to the original relation."[35] Obviously this does not exclude "general wealth," as the history of the ancient world or of feudal society demonstrates. But in these cases we are confronted with a process which, as Marx emphasizes, breaks up and destroys the natural social structure and, under very

33. Marx, *Capital*, *op. cit.*, vol. 1, p. 43ff.
34. Marx, *Grundrisse*, *op. cit.*, pp. 485ff.
35. *Ibid.*, pp. 486ff.

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particular conditions, leads to another mode of production. The development of "general wealth," of exchange value for the natural community does not mean "progress," but destruction.

The second characteristic of natural social structure is that production, since it only serves to reproduce pre-established conditions, does not determine the form of social synthesis as the immediate process of labor.[36] Of course, pre-capitalist societies too have their economies, and as the history of religion reveals, one can identify effects of the respective level of control over nature on social consciousness. Nevertheless, production does *not* exist as an isolated and independent sphere exercising specific causal effects on other, separate institutions, but rather as the realization of property relations determined primarily by extra-economic factors. Terray has worked out this peculiarity of pre-capitalist societies very concisely: "The development of capitalist production presupposes on the one hand the separation of workers and means of production, and on the other hand the existence of free workers. Pre-capitalist modes of production, by contrast, are characterized by the presence of extra-economic relations between producers, means of production, and (in certain cases) the non-producers. These relations are not merely the political or ideological reflection of relations of production; rather, they are themselves constitutive moments of these relations. This fact enables us to assert the dominance of the political and ideological superstructure in these modes of production. ... In all these cases [i.e., the pre-capitalist modes of production] it is extra-economic ties — whatever their character and however violent the antagonistic contradictions within them may be — which unify the members of the production unit and bring them together with the means of production. Thus, in pre-capitalist modes of production, these ties perform functions which in the capitalist mode of production are taken over by the commodity relation."[37]

The situation is completely different from what Lukács designated as "pure social structure."[38] Although this mode presupposes a productive synthesis "of two elements, natural materials and labor,"[39] closer examination shows that this productive synthesis is overlaid by anoth-

36. Thus Engels suggests that "in the final instance, the determining moment in history is the production and reproduction of immediate life." Friedrich Engels, *The Origin of the Family, Private Property and the State*, p. 71.

37. Emmanuel Terray, *Marxism and Primitive Societies*, (New York: Monthly Review Press, 1972), pp. 148 ff.

38. On this term, cf. Lukács, *op. cit.*, p. 247.

39. Marx, *Capital*, *op. cit.*, vol. 1, p. 43.

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er structure, which Marx calls the "value relation." It is not the production of use-values which creates the social nexus in capitalist society; rather, this nexus is "*established* only *post facto*, through the elevation of products into exchange values, and the actual exchange of these exchange values."[40] Value, which makes this synthesis possible is, according to Marx, something "supernatural."[41] It is not (as in natural social structure) a function of the producers' membership in a community existing prior to production. This sociality is the result of a nexus that develops on the basis of the *dissolution* of individuals from this community, a sociality which produces itself behind their backs, yet through their own actions: as an abstract social relation of individual acts of labor. Social labor time is capable of quantitative determination and thus stands in direct contrast to the particular natural form of labor. Value is the expression of an indirect social structure whose most important characteristic is abstraction from use-value, from every natural and particular determination of the products. "As use-objects or goods, commodities are physically different things. Their value-existence, in contrast, creates their unity. This unity arises not from nature, but from society."[42]

While in natural communities "specific *conditions of production* are set as limits for the development of productive forces," and indeed as "*sacred limits*" embracing specific types of consumption, distribution, and circulation of products as "absolute conditions," in the system of pure social structure "full development of productive forces becomes a *condition of production*."[43] The purpose of production is no longer to reproduce the natural conditions of production, but rather to produce abstract wealth, "without any other presupposition except the prior historical development."[44] The development of pure social structure explodes the traditional dominance of natural conditions, inasmuch as it turns the conditions of its becoming into *results* of its existence, and *itself* produces the conditions of its own consolidation and growth. Pure social structure reproduces the (initially already-existing) separation between producers and means of production, "between these inorganic conditions of human existence and this active existence,"[45] and more importantly *itself* generates the producers and means of produc-

40. Marx, *Grundrisse*, *op. cit.*, p. 172.
41. Marx, *Capital, op. cit.*, vol. 1, p. 47.
42. *Ibid.*, p. 47.
43. Marx, *Grundrisse*, *op. cit.*, pp. 485f.
44. Marx, *Capital*, *op. cit.*, vol. 1, p. 372.
45 *Ibid.*, p. 374.

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tion which suit it, by restructuring all pre-existing needs, capabilities, productive forces and material qualities which stand in the way of its processing nature. By producing with the capital relation a system in which "nothing appears which is *in itself higher*, justified in and of itself, nothing which is outside this circle of social production and exchange," pure social structure first creates bourgeois society and the universal appropriation of nature (as well as of the social nexus itself) by society's own members. "Following its inherent tendency, capitalism drives outward beyond national borders and local prejudices just as completely as it leaves behind nature worship, going far beyond the traditional satisfaction (self-contentedly restricted within specific limits) of existing needs and the reproduction of old ways of life. It destroys all this and constantly revolutionizes, tearing down all barriers hindering the development of productive forces, the expansion of needs, the multiplication of production, and the exploitation and exchange of all natural and intellectual/spiritual forces."[46]

III

What is the relation between the two types of natural law, and the two types of social structure? Are there relations of determination or dominance, of reciprocity or reflection, of analogy or elective affinity? If one follows orthodox historical materialism, with its distinction between base and superstructure, then natural law would be a mere superstructure, a form of ideology whose development is determined by the economy. The law, as one of the most striking formulations in *The German Ideology* puts it, no more has its own history than does religion.[47] If one follows a different theory (e.g., Habermas' functionalist learning theory), the relation appears reversed. According to this theory, the normative structures, amongst which natural law holds a prominent place, are the "pacemakers of social evolution," which occurs above all through a "moralization of law." Societies, says Habermas, "learn" by institutionally embodying rationality-structures, which are expressed in transcendent images of the world.[48] Weber chose a third route: to forego decisions about causal primacy and restrict himself to

46. *Ibid.*, p. 306.

47. Marx/Engels, *The German Ideology*, *op. cit.*, p. 91.

48. cf. Jürgen Habermas, "Historical Materialism and the Development of Normative Structures" in *Communication and the Evolution of Society*, (Boston: Beacon Press, 1979), p. 121. cf. also Habermas, *Theory of Communicative Action* (Boston: Beacon Press, 1985, vol. 1) p. 299ff., on natural law p. 356ff. Similarly, Klaus Eder, *Geschichte als Lernprogress?* (Frankfurt, 1985).

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a description of affinities.

Yet the distinction between natural and pure social structure goes beyond such unsatisfying (because either ahistorical or merely descriptive general statements to investigate relations between natural law and society in the course of their historical transformation. Both concepts rest on the role (fundamental for historical materialism) of social labor and thus appear to suggest an economistic interpretation. Yet, social labor plays its role in very different ways, depending on whether natural relations still have the upper hand in production or whether the "subjugation of nature" has been completed. Specifically, only in the latter case does social labor produce a totality in which the economic structure is constitutive for the forms of interaction, politics, law, etc. By contrast, in the first case, in societies where the economy neither subjectively nor objectively has reached the stage of "being for itself," the political, religious, and legal forms themselves "intervene constitutively into economic relations."[49] The forms of synthesis are determined by symbolic and ritual interactions, by mechanisms of kinship, belief, and/or authority. Which of these forms will dominate in a given case cannot be abstractly determined, but can only be ascertained through an analysis of the society in question. Concerning natural law, however, one can at least say that so long as production is reproduction of "natural conditions of production" (i.e., of a "real community" integrated through religious, political, or kinship structures) and though modified by production, is not dominated by science and technology, natural law is not mere ideology. Rather, it is one of those "ideal realities" in Godelier's sense, which function as constitutive elements of relations of production.[50]

Within the framework of natural social structure, natural law by no means embodies from the very beginning (as Luhmann asserts) "a thoroughly progressive orientation which is critical *vis-à-vis* traditional law."[51] Initially, in fact, it is exactly the opposite: a *reaction* against law gone too far, a struggle (which in intention was traditionalist-conservative) to set a limit upon the tendencies of increasing "positivization." For the ancient Greek world, authors such as Hippias or Antiphone, faced with the legalism of the classical polis, appealed to the "organic" laws of nature, not based on convention. Similarly, for the most im-

49. Lukács, *op. cit.*, pp. 125, 232 ff.

50. cf. Maurice Godelier, "Infrastructures, Society and History" in *Current Anthropology*, vol. 19, 1978, pp. 763-768, pp. 764 ff.

51. Luhmann, "Posivität des Rechts," *op. cit.*, p. 122.

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portant medieval natural law theory, Aquinas', who reacted to the increasing auto-nomization of the "*societas humana*" over against the "*societas christiana*," and sought to block the division of the world into a "*duplex ordo rerum*" through a gradual, teleological concept which took up and integrated the natural constellations. This is also the case with the various Christian sects of the high and late middle ages, from the Cathari and Waldenses to the Hussites and Anabaptists, who opposed an "absolute" natural law of the pre-lapsarian original condition (in which there had been only sacredness, unconditional love, and brotherhood), to the Church's "relative" natural law (which justified legal and state institutions as "*poena et remedium peccati*," as moments of the divine plan of salvation). It is true for the forms of natural law of the peasantry, which answered the early modern development of an autonomous estates-based economy and the expansion of the modern taxation-state with the "tradition" of the "ancient" and "divine" law stubbornly defending the social micro-cosmos of the village against all attacks from outside. It is true for the natural law of the estates, which, faced with the territorialization, monopolization, and leveling processes that went hand-in-hand with the concentration of state power in the early modern period, insisted on the structures of the old-European "world of authority" (Otto Brunner), based on the participation and consensus of the "*maiores et meliores terrae.*" And it even remains true for such believers in Absolutism as Bodin, who, although his theory of sovereignty removed the foundations from the old-European Condominate of landholding lords, mediatory councils, and land-assembly or parliament, nevertheless blocked the full unfolding of his theory's implications by putting limits on the ruler, limits which he found in late feudal natural law. Whichever form of natural law one examines: all stand for limits which social, legal, or political change had to respect; for presuppositions not established by "society" (or, as Hegel would say, by the "spirit"), and thus "removable," but a block whose dissolution into a system of pure social structure was anything but teleologically preordained.

Certainly these presuppositions were subject to many historical changes: the peasantry's "divine law" stood for a completely different world than the Sophists' natural law, and the "*lex evangelica*" of medieval heresies cannot be compared to 18th century "moral economy." Yet, the conflicts are identical. The sacralization of the Apostolic Community, like that of the village, was turned against a mobilization of the natural conditions of production, against the "rise in the capacity for

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disintegration with respect to all givens," which, according to Luhmann, increasingly characterizes modern society.[52] Pre-modern natural law does not *exclude* change, but instead binds it to certain premises exempt from change. To borrow a distinction from Levi-Strauss, one could say that early natural law opts *against* a "cumulative history," in which one renovation progressively succeeds another, and *for* a limited, repetitive history which never succeeds "for long in straying from the original direction."[53]

However, the attempt to control the dissolution of natural social structure through natural law counter-strategies has failed because the various natural law movements were too weak, not possessing the necessary means to attain their goals. Above all, the attempt failed because natural law theories themselves were far too self-contradictory to have been equal to the task of a legal or religious codification of the existing synthesis. In every case, their stance *vis-à-vis* the transformation they intended to control was ambivalent. The Church may well have declared the primacy of the "*lex divina*," but it granted such wide playing room for changes to the realm of "*lex naturalis*" and "*lex positiva*" that a comprehensive mobilization of the law became possible; the "transition to a structurally-variable law which is determined within society itself"[54] had already occurred in the canon law, which (in contrast to the codified and thus firmly established Roman law) was constantly being reshaped, modified, and, when necessary, ruthlessly altered.[55] While the sects, when confronted with this, called for a renewal of the "*vita apostolica*," they nevertheless expected this rebirth from individual efforts of belief, which ultimately only intensified the fragmentation and disintegration of the natural synthesis. The estates-based natural law (as represented, e.g., by the Calvinistic Monarchists), despite its orientation toward the late medieval-feudal "world of authority," went from a purely religious theory of resistence to a genuinely political theory of revolution, "based on the idea of a contract which gives rise to a moral right (and not merely a religious duty) to resist any ruler who fails in his corresponding obligation to pursue the welfare of the people in all his public acts."[56] The patrimonial-absolutist state attempted to freeze

52. Luhmann, *Gesellschaftstruktur und Semantik*, vol. 1, (Frankfurt, 1980), p. 33.

53. Claude Levi-Strauss, *Rasse und Geschichte*, (Frankfurt, 1972), p. 30.

54. Luhmann, "Positivität des Rechts," *op. cit.*, p. 122.

55. Walter Ullman, *Die Machtstellung des Papsttums im Mittelalter*, (Vienna-Cologne, 1960), p. 535.

56. Quentin Skinner, *The Foundations of Modern Political Thought, vol. II: The Age of Reformation*, (Cambridge, 1978), p. 335.

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the social dynamic in order to perpetuate its own power, yet its monopolization of legislative and sanctioning powers created the very institutional framework within which the "market social structure" (Weber) could expand and develop into early capitalism. Finally, the peasants fought in the great revolts from the 14th to the 18th centuries to push back aristocratic or absolutist appropriation of the agrarian surplus product, with the result that, despite their political defeats, an increasing proportion of the available surplus *did* in fact remain within the peasant economy, gradually producing — most clearly in England — that progressive polarization of the village community into rich and poor which gave rise to the capitalist lease-holders on the one hand, and the expropriated "free" laborers, on the other.

Through these ambiguities, pre-modern natural law ultimately negated itself. Instead of preserving "real community," it opened up space for changes increasingly beyond control. Instead of securing the "limits of growth," natural law itself helped undercut those limits, allowing them to disintegrate ever more swiftly: first in England, where in the 16th and 17th centuries a possessive market society (Macpherson) had already begun to unfold, and thereafter spreading very rapidly to the rest of the continent, mediated by a worldwide trade market and the mechanisms of the European state system. In the end, logically and irreversibly, natural synthesis dissolved into the "*bellum omnium contra omnes*," from which the bourgeois natural law of Hobbes and Locke knew only a single escape: convention. True, the Christian horizon of natural law was still present in their thinking, since establishment by convention of a "leviathan" or a "body politic" was meant to realize natural law by an "indirect" route. In fact, this "tradition" no longer possessed authority. For Hobbes and Looke, society was no longer an "organic" order, characterized by a final realization of its essence. It was a construct, an artificial body, manufactured via a contract. Willms has therefore correctly located the fundamental principle of this new bourgeois natural law in its "poetic subjectivism," i.e., in the conviction that history and society can be planned and shaped by a subject.[57]

Even the bourgeois form of natural law, realized in the North American and French constitutions, carried the germs of its own destruction. Social contract theory from Hobbes to Rousseau are typical products of a transitional society, on the one hand already presupposing

57. Bernd Willms, *Revolution und Protest, oder Glanz und Elend des bürgerlichen Subjekts*, (Stuttgart-Berlin-Cologne-Mainz, 1969), p. 27.

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certain essential elements of social structure (which is based on abstraction), while on the other hand resting on other presuppositions of decaying natural social structure: the "partial and disparate autonomization of the isolated individual,"[58] which is captured in the various versions of the "state of nature." The fact that bourgeois natural law theory starts with this isolated individual of indirect social structure (via contract, state, etc.), is at first fully justified. The possessive market society of the 17th and 18th centuries was, in fact, nothing but that "enormous collection of commodities" which resulted from isolated private producers. Yet, private interest is always also a socially-determined interest, presupposing a social system of labor and the division of labor — if indeed a social system is able to present itself in an abstract, "pure" form as money or capital.

The history of bourgeois society is determined by the fact that with the increasing consolidation of the capital relation this abstract synthesis becomes autonomous and begins to burrow back into the ground from which it arose. Progressive production (driven forward by competition) leads, as Marx shows in his analysis of the corporate and credit system, to the self-abolition of bourgeois society, the "liquidation of the apparent independence and autonomous existence of individuals."[59] The first to experience this liquidation are the actual producers, who in the capitalist production process suffer the denial of their individuality and experience bourgeois freedom as only the freedom of labor power to convert itself into variable capital. But even the luckier ones, the property-owners with command over more than just their labor power, do not remain protected from the maelstrom of competition. Through the development of the credit system and corporate forms of capital, they too are drawn into the whirlpool of a general centralization and expropriation process which (through "new forms of control over technological development, the accumulation and intermeshing of wealth, and the reorganization of market-structured interest-balancing") successively eliminates the basis from the "republic" of the market and transforms the functioning capitalist into a "mere manager and administrator of another's capital," who finally, as a "superfluous person," wholly disappears from the production process.[60] This self-negation of bourgeois society would indeed be, *rebus sic stantibus*, a form of "socialism" but a socialism of pure social

58. Marx, *Grundrisse*, (Berlin: Dietz, 1974) p. 906.

59. *Ibid.*, p. 559.

60. Klaus Lichtblau, *Theorie der bürgerlichen Gesellschaft*, (Lahn-Giessen, 1978), p. 367; Marx, *Capital*, vol. 3, p. 436, 387.

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structure, a capitalist production without capitalists and ultimately (where possible) also without producers, who step aside from the production process "instead of being its main agents." As Marx formulated this possibility in the third volume of *Capital*: "the abolition of the capitalist mode of production within the capitalist mode of production itself."[61]

Bourgeois natural law, with its hypostasization of the individual, describes then only a *transitory* constellation, based on the transition from natural to a purely social structure. Moreover, bourgeois natural law takes up only one side of this constellation — the production of the isolated private producers — thus overlooking how general social interest in contractual and voluntary relations is only possible because private interests are already socially-determined before the exchange act. Its attempt to preserve the extra-social dimension of the "natural" individual through fundamental human rights is condemned to failure from the start, and the constitutions it deduces purely from reason are continually being overwhelmed by the social dynamic. Precisely *because* bourgeois natural law had firmly established the inalienable rights of the individual (rights held to exist beyond any social determination) it prepared the ground for its own negation. Precisely *because* it declared that society was derived from isolated individuals, bourgeois natural law began that dynamic which in the end ruthlessly sacrificed the individual to abstract social structure. The reality of bourgeois natural law is not the individual with his rights; rather, it is *society* which sets man as *its* barrier. But to set something as a limit, as Hegel knew, means already to have gone beyond it.[62]

IV

In all its forms up through social contract theory (in which the dominance of pure structure is already expressed), natural law presupposed certain natural relations which, although not excluding a limited autonomy of society and an equally limited domination over nature, nevertheless *did* exclude the possibility of society's full-scale control over the material basis of its reproduction. Even bourgeois theory was forced to admit (in its concept of the state of nature) that society did not arise from a *creatio ex nihilo* and was certainly not the pure "communicative community" it claimed to be. Though nature, under bour-

61. *Ibid.*, p. 438.

62. G.W.F. Hegel, *The Science of Logic*, (London: George Allen and Unwin Ltd., 1969), p. 134.

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geois production, had already become an object of ruthless exploitation, vestiges of that symbiotic natural relation (which Spaemann identifies as fundamental for all pre-modern civilizations[63]) still remained in the labor process and in familial organization.

The self-abolition of bourgeois society puts an end to this vestige, but not because use-value production becomes untenable. What *does* disappear (or rather, is destroyed, through the aggressive expansion of capital and science) is the independence and specific logic of both subjective and objective nature: of family and kinship relations, which, in whatever depraved form, have survived as residues of real community; of the human body and human instinctual nature; of self-regulating eco-systems; of the earth's material and energy resources. Capitalism injects its principle into the natural conditions of production which it already found in existence. Systems of ecological equilibrium which had developed over millions of years are de-stabilized by industrially-conducted biocide, energy and material circulatory systems are interrupted and genetic resources annihilated, with the unavoidable consequence that the self-contradictory society is confronted with ever more gigantic tasks of mediation and recombination, ones which hopelessly overtax its powers. In the end there remains not only an exhausted and devastated first nature, one progressively stripped of its regenerative capacities, but also a second nature produced by nuclear fusion, genetic manipulation, and other techniques —a second nature which adds a new dimension to the crisis cycle of capitalism: the catastrophic cycle. Heidegger, whose metaphysics of being completely ignores the social character of technology, intuitively captured the essence of this process when he wrote that "technical production is the organization of departure."[64]

Natural law then metamorphizes into pure ideology. It already bore ideological features under natural social structures, since it did not raise social production to a standard, but only its intellectual, religious, or ethical mediations. However, since these mediations simultaneously stood for a constellation in which the natural conditions of production blocked tendencies toward a pure social structure, it was not

63. Robert Spaemann, "Die Aktualität des Naturrechts" in *Zur Kritik der politischen Utopie*, (Stuttgart, 1977), p. 189.

64. Luhmann's most recent book clearly works out the tendency towards ecological endangering, even self-destruction, which is built into the "autopoietic" process of modern society: Niklas Luhmann, *Ökologische Kommunikation. Kann die moderne Gesellschaft sich auf ökologische Gefährdungen einstellen?* (Opladen: Westdeutschen Verlag, 1986).

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merely ideology. It expressed a relation structure in which society was not that absolute and god-like authority it appears to be to apologists of the objective spirit.

After the system of pure social structure, brought about and flanked by bourgeois natural law, has revealed all limits to be void or imaginary and has raised permanent dissolution and revolution to its only principle of organization, the truth content of natural law is finished. The realization of capitalism is equivalent to the de-realization of classical metaphysics, which rested on "natural conditions of production"; it is equivalent to that "devaluation of all values" (Nietzsche) in which late bourgeois philosophy recognized the signature of the age. The departure from natural law, already announced in legal positivism at the turn of the century and finding its completion in modern functionalism, is therefore logical and irrevocable. Law is restructured into a system or an agglomeration of mere regulations, alterable at any time. Along with the dissolution of the "natural conditions of production," normativity is transformed into "momentarily frozen preferences" (Luhmann). In a world where, as Luhmann puts it, the movable is no longer based on the solid, but rather the solid on the movable,[65] there can be no natural law, and thus no standard which could help formulate a global alternative to pure social structure. In *The Order of Things*, Foucault expressed farewell to "old-European" philosophy, the premises of which had been overwhelmed by this development: "We who believe ourselves bound to a finitude which belongs only to us, and which opens up the truth of the world to us by means of a new cognition, ought we not remind ourselves that we are sitting on the back of a tiger?"[66]

65. Martin Heidegger, *Holzwege*, Gesamtausgabe vol. 5, (Frankfurt, 1977), p. 294.
66. Luhmann, "Positivität des Rechts," *op. cit.*, p. 145.
67. Michel Foucault, *The Order of Things*, (New York: Vintage Books, 1973), p. 322.

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Ortega's Theory of Social Action

Luciano Pellicani

Sociology came into being when its "founding fathers" saw what had remained hidden in the past, i.e., that man is a "social animal" in a sense much more profound than even Aristotle thought: he is a social animal not only because he lives in continual "commerce" with his peers, but also because society lives in him as a cultural tradition. In other words, sociology was born out of the "revolt against individualism"[1] accompanied by the realization that social life is *sui generis*: "as if it had an autonomous life, completely separate from human organisms."[2] Thus, to provide a sociological explanation is to show the reasons why behavior cannot be correctly deciphered without taking into account the particular cultures in which actors were socialized.

This approach was accused of "totalitarian realism"[3] when it degenerated to sociologism in explaining human behavior *solely* through cultural variables, as if man were a *tabula rasa*, without biological and psychological motivations, molded entirely by the social environment.

Yet Durkheim showed most clearly that social reality, i.e., "the ways of thinking, feeling and acting external to the individual, and endowed with powers of coercion, in virtue of which they impose themselves on that individual,"[4] is a reality *sui generis* and that society is a moral community which acts as an autonomous force within the individual in the form of obligations, dispositions and predispositions. This predicament necessitated a new science to study this reality.

So far, however, the international sociological community has not been very clear concerning the specific object of sociology. Under the influence of Parsons' *The Structure of Social Action*, it has been assumed that the Durkheimian and the Weberian concepts of social action can readily coexist. Thus, in his *Introduction to General Sociology*, Rocher defines the object of sociology by joining Durkheim's definition of social

1. R.A. Nisbet, *The Sociological Tradition*, (Heineman: London, 1970), p. 7.
2. Leslie White, *La scienza della cultura*, (Sansolini: Florence, 1977), p. 51.
3. Jean Piaget, *Études sociologiques*, (Droz: Geneva, 1955), p. 145.
4. Emil Durkheim, *Le regole del metodo sociologico*, (Comunità: Milan 1963), p. 26.

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action with Weber's.[5] Here Rocher misses the fact that Weber's definition as "an act referred (in the sense intended by the agent or the agents) to the attitude of other individuals and oriented in its course on the basis of this"[6] does not define social action. How is it that the man universally considered the twentieth century's greatest sociologist has failed to identify the specific object of his discipline?

Of course, Weber recognized that "social action can be determined ... traditionally" and emphasizes that "this form of action is right on the border-line, and often beyond it, of what can be defined in general as action oriented on the basis of sense."[7] Aside from the fact that Weber considers the meaninglessness of social action a border-line case, it is interesting that for him traditional social action "is determined by an acquired habit." Here it is clear that Weber was not familiar with what Durkheim had clearly perceived as the coercive normative nature of social reality. Anxious to restore to individuals the freedom which Comptian and Marxian sociology denied them, Weber identified social action with inter-individual action. However, they are two radically distinct things. What is most surprising is that his definition should have been hailed as if it were a tremendous achievement and considered a fundamental concept of contemporary sociology.

Ortega y Gasset developed his sociology in response to his realization of the inadequacy of Weber's theory of social action. Ortega stresses this inadequacy explicitly: "Weber thought that the social phenomenon consisted in the behavior of one individual towards another individual. The essential characteristic of this relation between one man and another is that when we act upon another individual we know that his reaction will depend on what our action was like. This forces us to anticipate in our behavior that possible reaction. According to this theory, the social phenomenon would consist in inter-individual relations and nothing more."[8]

If Weber were right in identifying social reality with inter-individual relations, there would be no need for a specific sociological theory; it would be sufficient to study the individual, the forms of his "commerce" with others, and the objective results of this commerce. But Ortega locates a factor that stands above the individual. He calls it the "third character" because it mediates relations between two individ-

5. Guy Rocher, *Introduzione alla sociologia generale*, (SugarCo: Milan, 1981), pp. 23-27.

6. Max Weber, *Economia e società*, (Comunità: Milan 1968), vol. I, p. 4.

7. *Ibid.*, vol. I, p. 24.

8. Ortega y Gasset, "Una vista sobre la situatión del gerente o "manager" en la sociedad actual," in *Obras completas*, *Revista de Occidente* (Madrid 1946) , vol. IX, p. 733.

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uals and regulates them with its invisible but active presence. The "third character" is integrated with our personality, in that "there are ideas, emotions, norms that act in us, and which are, for the most part, social threads which pass through us."[9] This means that "before being psychic subjects we are *sociological subjects*,"[10] i.e., *cultural animals* "modelled" by a constant all-pervasive pressure which, without our being aware of it, injects us with beliefs, values, norms, expectations, tastes, etc.

For this reason human life has a *biform* structure: it is always both individual and collective. The latter should not be understood in the obvious sense that man lives in continual commerce with others, but rather in the sense that *society must live in him in the form of internalized culture*. Ortega draws the conclusion that there is a double law of heredity: a biological and a cultural one; and since every tradition has a history — or rather, universal history coincides with the genesis and the development of traditions — man, to the extent to which he is molded by his culture, is constitutionally a historical being.[11]

Ortega seeks to identify the essential traits of social reality or, what amounts to the same thing, to elaborate a sociological theory of human action. He sees individual life as a radical reality, which does not mean that it is the only reality, or the most important one. It simply means that it is the reality which filters out the other realities. Of these realities, the third character — the social — is omnipresent and intervenes in all inter-individual relations. It has an unusual, almost mysterious nature. It is not a natural or even a human phenomenon. When we talk of human action, we refer to a type of behavior intentionally aimed towards an end freely chosen by the agent. But social action is not of this type: it is *anonymous* (or impersonal), *coercive* and *irrational*.[12] It is an action *sui generis*, which appears along with cohabitation, but existed prior to it.

In order to clarify this, Ortega examines the apparently banal action of the greeting. When we take the hand of a person coming towards us

9. *Ibid.*, p. 540.

10. *Ibid.*, p. 540.

11. On this specific point see my essay "Storia e Sociologia secondo Ortega y Gasset," in L. Infantino and L. Pellicani, eds., *Attualità di Ortega y Gasset*, (Le Monnier: Firenze, 1984).

12. It should be born in mind that Ortega's concept of rationality has nothing to do with Weber's. It coincides with the transparency of the meaning of action, and thus when Ortega says that social action is irrational he means that for the actor it is opaque and unintelligible.

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and shake it, we carry out a mechanical gesture which cannot be considered our creation. We do it because it is what one does. But, if we think about it, we realize that the greeting is something more than a habit. A habit is something we do almost automatically, but which depends on our will, such as going for a walk in the park. If one day we decide not to go, nothing will happen. The greeting, on the other hand, is something which we cannot decide not to do with impunity. Either we accede to the rite of shaking hands, a rite instituted before we were born, or we will be punished. The greeting is simply one of the many models of behavior every human being is obliged to follow in order to interact with others. A large part of our lives must move within certain pre-established and standardized schemes of action. These schemes are *social* actions. Strictly speaking, they are not the actions of actors, but actions of the society of which the actors are a part. Hence, Durkheim's thesis is that social actions can be considered like things: they are external to individuals, exercise a certain pressure on them and resist their will. Social action is not a function of individuals' life-projects, nor is it their own creation. Two corollaries follow from this: "uses" are *constitutive social factors,* and the social is only a gigantic symbolic building, whose "bricks" are the uses, i.e., the "norms of behavior — intellectual, sentimental, or physical — which impose themselves on the individual, whether he likes it or not."[13] And since a use is not a simple habit, but rather an impersonal order or prohibition which, like all orders and prohibitions, is compulsory, it is called an *enforced collective use.*

The question remains as to who forces the actors to conform to uses, or who controls and encourages the respect of social norms. The answer is surprising: everybody and nobody, i.e., an anonymous and multitudinous subject: the people. Uses are not the property of individuals as such. If this were the case, they would simply be habits which actors could decide to adopt or not, or agreements stipulated by common accord.[14] Instead, they are actions which impose themselves

13. J. Ortega y Gasset, *En cuanto al pacifismo*, in *Obras Completas*, *Revista de Occidente*, (Madrid, 1946), vol. IV, p. 297.

14. "It is not necessary for everyone to agree in order for a use to be constituted. On the contrary, all the individuals of a society never have agreed on a use. Furthermore it is never a question of agreement. The error of the eighteenth century was to have believed that society and its constitutive functions — uses — were formed on the basis of an agreement. On the basis of this reasoning, it is sufficient for a certain number of people to reach an agreement — whether or not they are aware of doing so, whether or not the decision to do so is deliberate. But what number? The majority?

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simply because it is the will of the people, and no one can escape without being punished. In short, what happens is that once the use has been enforced, it imposes itself as a model of behavior. Behind the use there is a power which threatens sanctions of every type, and even an element of violence. Use is violent, at least in the sense that violence is the *ultima ratio* people resort to in order to obtain from single individuals the respect of the social norms they control. The threat of violence can be directly controlled by the people — in this case called weak and diffused uses — or by special repressive agencies (the State and its coercive apparatus) — therefore there is no difference between the nature of social norms and juridical norms. They are both part of the same category of phenomena Ortega calls *enforced collective usages*.

The power people exercise on us is enormous: they oblige us to perform certain actions and to behave according to certain rules. This means that, in addition to submitting to the impositions of nature, and of others, we must also submit to the impositions of collective uses which operate automatically, mechanically and, occasionally, even brutally. But the most insidious characteristic of uses is that "the nature of uses is the fact of having lost their meaning, their having been once intelligible, inter-individual human actions, actions with a soul, and then having been emptied of meaning, sense, become mechanized, automized, almost fossilized, soulless."[15] This leads to an unavoidable paradox that "the social factor itself, society as a system of uses, an automous organization of human life, is in fact dehumanized, dis-animated, is the mechanized man, transformed into a thing similar to nature."[16]

The inhuman and alienating nature of the social is felt particularly intensely by young people, who as yet have not fully accepted the principle of reality and who, for this reason, are inclined to rebel against the conventions and taboos of their fathers. They feel this as a reality foreign to them and oppressive, and they do not realize that without that power, society would be impossible: without that great conservative and cohesive force which keeps us together, human beings, who

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This is the majoritarian error; at times it is the majority, but at others — almost always — it is a minority, albeit a relatively large minority. In adopting a certain form of behavior, this minority succeeds — by means of a strange automatism — in having this form of behavior, which up until then had been restricted to a given group of individuals, converted to that terrible and inexorable social force which is the use." (J. Ortega y Gasset, *El hombre y la gente,* in *Obras Completas*, *op. cit.*, pp. 224-225).

15. *Ibid.*, p. 216.

16. J. Ortega y Gasset, *Individuo y organización*, in *Obras Completas*, vol. IX, p. 683.

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are both sociable and terribly unsociable, would cease to act in any civilized manner.

The role or the function that the power of people exercises is decisive, since "the so-called society is never what its name promises. It is always concurrently a *dis-society*, a repulsion among individuals ... In order to ensure that a minimum of sociality should prevail, and thus to permit society, as such, to continue to exist, its internal public power must intervene frequently, and even violently. It is even necessary — when society develops and ceases to be primitive — that there be a body specially charged with the function of making that power work in an unchallengeable manner. And that is what is generally called a State."[17]

The State can thus be defined as a "superlative use, that is, a use which is particularly strong, rigid and unchallengeable; or, more precisely, as a complex of collective uses, armed with violence, the function which is to insure that the centripetal forces prevail over the centrifugal forces, so as to avoid the dissociation of the social body ... If it is sustained by a public opinion which is fully present, its violence will be *legitimate*, that is, in conformance with the modes of feeling and thought spread through the social body; otherwise, it will be illegitimate and will weigh on the social body like an oppressive 'orthopedic device.'"[18]

Contrary to Weber, for Ortega "the social fact appears not to be in opposition to the individual fact, but in opposition to the inter-individual fact."[19] In living together the actors interact with their own ends in view; they attribute a certain meaning to their actions and try to anticipate the reaction of others. Since Durkheim saw best the nature of social facts, Ortega starts from his theory in order to penetrate the mystery of sociology, and not from Weber's. However, he does not completely follow Durkheim. Durkheim's theory of social action is marked by a color-blindness which is the opposite of Weber's: he perceives only social life, and cannot show that it has characteristics antithetical to an authentically human life. Social life is made up of uses and in "conforming to those uses, we live on behalf of society and of the collectivity. But it is not something human or superhuman: it acts solely through a mechanism of uses of which nobody is the responsible or

17. J. Ortega y Gasset, *El hombre y la gente*, in *Obras Completas*, vol. VII, p. 269.

18. For a more detailed explanation of Ortega's theory of legitimacy see my essay "La legittimazione del potere nella città secolare," in *Mondoperaio*, 1983, no. 10, as well as my monograph *Introduzione a Ortega y Gasset*, (Liguori: Napoli, 1978).

19. J. Ortega y Gasset, *El hombre y la gente*, in *Obras Completas*, vol. VII, p. 203.

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conscious creator."[20] Ortega's major disagreement with Durkheim was that Durkheim did not see the irrationality of social norms, i.e., their opaqueness and unintelligibility. Rather, he thought the opposite: that "the social fact was authentically rational, in that it was an emanation of a supposed, mythical social conscience or collective soul."[21] And so he made the same mistake as Hegel, Comte and Marx: he deified the social. Ortega reacted against this by relegating social life to an inferior order, which "while being essential for the formation of man, has a function similar to that of a vehicle, a tool, a device."[22]

Having identified the social field with the inauthentic "they," Ortega locates the death of the individual and of all that is personal and creative in hypersocialization. To wish to be an individual, he writes, means "to undertake the commitment to be unique and not interchangeable"[23] whereas society tends to produce standardized and interchangeable men. At most, it can — if it has a highly differentiated structure — demand superspecialized, but certainly not personalized, professionals. This occurs because society "has a structure which objectively consists of a hierarchy of functions,"[24] which in order to be regularly carried out, depends on a vast range of "social schemes" or roles. Since "the real vocation of man is the vocation of an extremely concrete, individual and integral life, and not of the social model,"[25] entering a role means entering a cage. This cage might be large or small, more or less in accordance with the ideal life of the "I" but there will never be that harmony Durkheim postulated. In the best cases there will be a satisfactory compromise between personal vocation and social role. In less satisfactory cases, it will be the "I" which will disappear, literally swallowed up by the role: "the perfect 'civil servant' — or the 'I' will move in its role with an acute sense of alienation, since its life will be literally eaten up by activities foreign to its vocation."[26]

A further point of divergence betweeen Ortega and Durkheim concerns the subject-creator of culture and the agent of historical change.

20. *Ibid*, p. 77.
21. *Ibid*, p. 77.
22. J. Ortega y Gasset, *Un rasge de la vida alemana*, *op. cit.*, vol. V, p. 203.
23. J. Ortega y Gasset, *Individuo y organización*, *op. cit.*, vol. IX, p. 688.
24. J. Ortega y Gasset, *España invertebrada*, *op. cit.*, vol. III, p. 98.
25. J. Ortega y Gasset, *Sobre las carreras*, *op. cit.*, vol. V, p. 171.
26. This, for example, is the case of the worker who "compared to the artisan ... is almost not man ... in that his work does not have an individual and personal relationship with his person. His work is anonymous, not differentiated, not individualized, depersonalized" (J. Ortega y Gasset, *Individuo y organización*, *op. cit.*, vol. IX, p. 688 and *Las profesiones liberales*, *op. cit.*, vol. IX, p. 692).

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In his *Elementary Forms of Religious Life*, Durkheim reached the conclusion that "society possesses a creative power which no observable being could equal."[27] Ortega instead attributes to society only the function of conserving and transmitting what individuals have created. Of course, every creative act takes place within a specific social context and a precise cultural tradition, but it is always an individual act, never a collective one.

But if the individual is really a prisoner of the network of uses, how can he break it and think of something new? Human personality can be represented as an empty sphere, which thickens from the outside toward the center, as the process of socialization progresses. "The external part of the sphere — the person's social spirit — is of varying thickness, but in the middle there is a central void."[28] This central void is not filled in by society but by the individual. There creative processes take place thanks to a natural gift — imagination — and a specific practice: *ensimismamiento.* To *ensimimarse* means to withdraw into oneself, where creative imagination can work, away from people's manipulating pressure. By practicing *ensimismamiento*, man can break the crust of uses and think up something new."[29]

Hence, imagination is the source of cultural change. Thus, to paraphrase Saussure, nothing enters culture without having been in the imagination, and all evolutive phenomena have their roots in the individual.[30] If there were only social changes, even radical changes would be inexplicable. Cultural changes could only be explained by postulating the existence of a superhuman power, which is precisely what Durkheim did.

Naturally, it is not sufficient for a new idea to be thought up by an individual for it to be incorporated into the cultural tradition. A distinction must be made between invention, which is always personal, and innovation, which is the process through which the former becomes a use, a widespread way of thought. This process of conversion cannot be explained by the concept of imitation. The latter presupposes that a certain model of behavior is already in full vigor, and that, therefore, it has imposed itself as a *norma agendi*. But before that occurs, its role is completely secondary. It is necessary, therefore, to resort to

27. E. Durkheim, *Le forme elementari della vita religiosa,* (Comunitá: Milano, 1963), p. 486.
28. J. Ortega y Gasset, *Sobre los Estados Unidos*, *op. cit.*, vol. IV, p. 376.
29. J. Ortega y Gasset, *El hombre y la gente*, *op. cit.*, vol. VII, p. 83.
30. J. Ortega y Gasset, *Una interpretación de la historia universal*, *op. cit.*, vol. IX, 1902.

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something else in order to explain the birth of a use. Ortega formulates this as follows: "A lot of data, above all ethnological data, oblige us to think that society is born from the superior attraction which one or several individuals exercise on other individuals. Superiority, the excellence of a certain individual, automatically arouses in others an impulse of adherence, a tendency to follow. The manners of this eminent person are adopted enthusiastically as super-individual norms by those who are attracted. If we are to talk of instinct, let us say that the social instinct consists concretely in an impulse of docility which certain individuals feel towards others perceived as exemplary. This dynamic relation between the superior man and the desire to follow him, to conform to him, which he arouses in others, appears in all societies from the roughest and most primitive to the highest and most materialized societies."[31]

The wheels of history are, so to speak, lubricated by the "disinterested"[32] creativity of exemplary individuals, and put into motion by the enthusiasm of their followers. For this reason, Ortega believes that "human society is always aristocratic, whether it likes it or not, by its very essence,"[33] and that "reciprocal action between the masses and the chosen minority is the fundamental factor of every society and the agent of its evolution towards both good and bad."[34]

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31. J. Ortega y Gasset, *No ser un hombre esemplar*, *op. cit.*, vol. II, p. 355.

32. One of the theses Ortega insisted on most is that according to which creative activity is the exact opposite of a reaction to imposed needs: it is of a disinterested and recreational nature. It is only at a second stage that the principle of utility intervenes to exploit and treasure what had initially been created by that creative activity. Accordingly, Ortega argued that the State results from activities and motivations of a more "sporting" nature, rather than from activities and motivations of an economic nature. This is less extravagant than it may initially seem. One only has to think of the theory on the esthetic-recreationed origin of agriculture and of the taming of animals put forward by Geza Roheim in *Origine e Funzione della Cultura*, (Feltrinelli: Milano, 1979) and of the theory of the anti-economic origin of the State illustrated by Marvin Harris in his *Cannibali e re* (Feltrinelli: Milano, 1979), not to mention Johan Huizinga's theories in his *Homo ludens* (II Saggiatore: Milano, 1969).

33. J. Ortega y Gasset, *La rebelión de las masas*, *op. cit.*, vol. IV, p. 150.

34. J. Ortega y Gasset, *España invertabrada*, *op. cit.*, vol. III, 103. Here I believe it useful to remind the reader that elitism did not prevent Ortega from advocating a "new type of democracy" based on economic planning, the evolutionary socialization of wealth, and the workers' statute, as I have discussed in my essay "Il liberalismo socialista di Ortega y Gasset" in *Mondoperaio*, no. 7-8, 1983. Those who consider Ortega a champion of bourgeois reaction against mass democracy are simply not well informed on the subject. One only has to think that even in his *Rebelión de las masas,* which supposedly contains a nostalgic and reactionary acclaim of a classist society, Or-

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Nonetheless, social reality remains paradoxical. It is undoubtedly depersonalized, standardized, stereotyped, platitudinous, conformist; but at the same time it is what allows man to make progress and history. In fact, thanks to what is "mechanically imposed on individuals, the creations of these individuals can at least partially be accumulated and treasured."[35]

The important irreplaceable function of uses is to ensure that the past, in the form of cultural traditions, provides individuals the starting base, a system of already proven solutions, an arsenal of ideas, techniques and institutionalized practices with which to face life and its problems. Without traditions every man would be a first man, obliged to start everything over again, to start off from the primitive cave. Man is first and foremost an heir who consumes the past in the sense that the starting point of his life is what previous generations have transmitted to him through the process of socialization.

Thus, the unwinding of generations is regulated by the *principle of continuity*, and that for this reason "society is slow-moving, lazy, dragging itself along and advancing in history at the pace of a slow, old cow, exasperating us for its sluggishness. And since history is above all history of the collectivity, history of society — hence history of uses — this explains the strange slow pace at which universal history moves forward, a universal history which needs hundreds and hundreds of years to take one really substantial step forward."[36]

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tega stated that "we are obliged, if we do not wish to be crazy, to draw the following conclusions: the first, that liberal democracy founded on technical creation is the best type of public life yet known; the second, that this type of life may not be the best imaginable, but that whatever type of better life we may imagine will have to keep the essence of its principles; third, that any return to forms of life inferior to those of the nineteenth century would be suicide." (*op. cit.*, vol. IV, pp. 173-174).

35. J. Ortega y Gasset, *Individuo y organización*, *op. cit.* , vol. IX, p. 684.

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Crazy Machines

Ronald David Schwartz

I want to examine the Habermasian account of modernity from a particular vantage-point: namely the collection of new technologies that are called variously "artificial intelligence," "knowledge engineering," "intelligent systems," "expert systems," and the like. The significance of these technologies far exceeds whatever role they may come to play in business, government, or the other institutions they penetrate. I suggest that they cast doubt over the entire project of modernity as understood by Habermas — not because they signify the penetration of the lifeworld by instrumental rationality, but because they demonstrate the extent to which the formation of the lifeworld itself has simply moved beyond the problematic of autonomy and communicative rationality elaborated by Habermas. To the extent that Habermas himself has become aware of some of the disturbing possibilities, he has been forced to assign them a subordinate place within his highly formal notion of communicative action, marking as incomplete or residual other alternative accounts of communication (or non-communication) — Goffman, Garfinkel, Schutz, post-structuralism, and the other possibilities lurking in the communicative darkness. Their status as systematic social theory aside, these other accounts suggest the lack of pertinence of communicative competence to what is actually going on in everyday life in the modern world. Habermas understands modernity as stripping away the mythic content of the lifeworld, rendering it a proper reflective medium for communication and understanding among autonomous individuals. But from the other side comes the suggestion that under modern conditions communication and understanding are just an "effect," that communicative competence is unnecessary, that the main demand issuing from the lifeworld is for semantic closure, not greater autonomy.

Artificial intelligence (AI) programs are then symptomatic of this state of affairs; it is precisely semantic closure that they offer. They should not work, and yet they do. They operate through a contrived effect, but one which has its roots deep within the modern lifeworld. In fact AI promises to have unsettling consequences for a range of institutions directly associated with modernity — institutions organized in terms of instrumental rationality. Here Habermas' proposed emancipatory reconstruction of institutions along the lines of communication theory depends on identifying and containing the principle of

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instrumental rationality now embodied by these institutions. However, if the problem does not lie with the overextension of instrumental rationality, but with pathologies originating in the lifeworld itself, then the proposed solution may just add to the problem. Communicative competence may not be the only thing, or even the most important thing, tucked away in the lifeworld.

Superficially at least, the applications of computer technology appear to confirm Habermas' diagnosis. The extension of computer technology is the extension of control and domination in social life. The most politically and economically decisive applications to date carry forward the project of social control — i.e., databanks expand the power of administrators, corporations, banks, police, and the military. Rationality is identified with bureaucratic organization, hierarchy, and centralized control. For Habermas, however, subjecting the institutions of modern society to more and more rigorous instrumentalization drives the lifeworld (the world of practical reason and moral autonomy) into retreat as the scope of system integration increases. In the end, the integrity of the lifeworld must be guaranteed by the other meaning of rationalization: rationalization as the expansion of autonomy, which remains opposed to the distortions of instrumental reason. As the repository of subjective meanings as well as social practices, the lifeworld can become the stage for a variety of social movements aiming to extend the communicative element in institutions. The dualism of system and lifeworld enables Habermas to attribute pathologies of social life to forces external to the lifeworld itself. Locating the origins of the instrumentalization of social life outside of the lifeworld, in the realm of material reproduction, insures that symbolic processes indigenous to the lifeworld retain their potential for a communicative rationality based on mutual understanding.

I want to argue that the new technologies of artificial intelligence cut obliquely across this conceptual scheme. The practical implementation of AI systems also demonstrates that this system/lifeworld dichotomy is really a simplification of a very much more complicated arrangement, a dualistic reification of what in fact are a heterogeneous collection of discrepant practices classified conveniently as belonging either to the world of systems or the world of common sense and everyday life. Habermas' objectivistic account of the logic of science, on the one hand, and his rendering of the social-contextual foundations of understanding and communication as at base unproblematic, on the other, preclude recognizing this.

The debate between philosophers and the AI community over the possibility of artificial intelligence reproduces features of the Habermasian lifeworld/system dichotomy. On the one hand, philosophers like Dreyfus and Searle, situated within phenomenological and post-Wittgensteinian philosophy, emphasize the special properties of human intelligence — its dependence on context, its global character, its intentionality. It is easy to demonstrate that hermeneutically-constituted human understanding cannot

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be reproduced through computational means.[1] On the other hand, the positivistic self-understanding of their own research project prevents AI researchers from recognizing that what makes their programs work is not the faithfulness with which they have captured the operation of the mind, but the extent to which the programs crystallize and recreate social practices. The AI researcher believes that AI will finally arrive at psychology as the objective description of the properties of the mind. Habermas also has recourse to genetic psychology to supply objective validation for his communication theory.

Habermas might see AI as further evidence for the colonization of the lifeworld by instrumental reason. But the development of the technology could just as well be described as the colonization of instrumental reason by the lifeworld. By this I mean a desystematizing of instrumental *practice* through the invasion of heterogeneous elements, cut loose from their moorings in everyday life, and absorbed by AI, which seeks an ever more "realistic" interposition of programs as actors in social situations. At the same time the programs can claim to be "truer" to the reality of everyday life and common-sense reasoning than Critical Theory, which upholds a version of communicative rationality made irrelevant by programs that can claim to faithfully reproduce people's real practices. Without a rigorously defended standard of instrumental rationality (along Weberian lines) I do not see how it is possible to differentiate a sphere of autonomy (along Habermasian lines). The opposition system/lifeworld occurs in the first place within recent history through a separation and autonomization of spheres of instrumental activity. The collapse of this opposition across a range of institutional practices renders the whole project of liberation through autonomy questionable; one no longer knows where to begin or what to oppose. A kind of computer Luddism might be one response. Another might be technological apartheid, where the programs are required to show their identity cards so they won't be mistaken for human actors. The pressure for the commercialization of AI technology over the next five to ten years makes any kind of opposition look futile. The programs will become more "friendly" as their workings become less machine-like. They will increasingly slip into social situations as social actors, making themselves indispensable. They will reproduce principles of the lifeworld itself (the typified, routinized, Schutzian lifeworld), of everyday life and common-sense reasoning. In a world where the machines are as "crazy" as the people who use them, how will it be possible to identify and distinguish communicative and instrumental rationalities as oppositional poles for emancipatory practice?

1. See Hubert Dreyfus, "From Micro-Worlds to Knowledge Representation: AI at an Impasse," in John Haugeland (ed.), *Mind Design* (Cambridge, 1981), pp. 161-204. In the same collection is the now classic essay by John Searle, "Minds, Brains, and Programs," Haugeland, *op. cit.*, pp. 282-306. A number of important essays are collected in Haugeland's text.

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The techniques employed by the programs for passing as social actors, interposing themselves within social relations, support the claim that there is a general desystematizing of instrumental reason occurring. I am assuming that the AI technology available today is only a beginning. It is not merely a question, however, of the level of sophistication of the technology. More important is the growing availability of the technology and its widespread implementation. As Weizenbaum's ELIZA program demonstrated (the robot Rogerian psychiatrist), under the right conditions a trivial program can "pass" (the Turing test). The program need not be a "better" psychiatrist, nor make an attempt to rationalize or improve psychiatry. AI technology is finding its way into a variety of institutional settings, both technical and non-technical. The technology also has migrated downward onto microcomputers, which increases its availability. "Expert-systems," for instance, are likely to invade much the same territory as spreadsheets.

Expert-systems are programs designed to apply expertise extracted from experts. The way this is accomplished has important consequences for processes of rationalization within institutions. Expert-systems are built of so-called "production-rules." These make no attempt to organize knowledge along formally rational lines. The structure of knowledge (e.g., hierarchical) is lost as the knowledge-base is assembled. Each production-rule behaves independently of every other. From the technical side, the modularity of production-systems is what makes them attractive. Rules may be added to cover details and exceptions, and an individual rule may be changed and reinserted if it produces the wrong results. An "inference engine" cycles again and again through the knowledge-base deriving longer and longer chains of deduction.

The cycles of deduction are just mechanical. The search for deductive interlinkages does not itself trace the outline of social practices or institutional structures. All that is necessary is that a knowledge-domain be modularized, packaged as little "chunks" of knowledge. The apparent rationality of the expert-system, its capacity to perform as a social actor, is an "effect." The production-rules are like still photographs of social practices; with a sufficient density of rules and with a sufficiently powerful inference engine, it is possible to give the "illusion" of human performance in the same way that the "illusion" of motion is created by a motion picture projector.

The production-rules of an expert system have been described as "lore" — consisting of unwritten knowledge, rules-of-thumb, best guesses, etc. This lore accounts for the actual practice of the expert in a way curiously at odds with formal rationality. Taylorism in industrial management in fact rejected rule-of-thumb knowledge in favor of integrated and systematic knowledge organized according to ground rules. Expert-systems thus represent kind of "folklorization" of social organization rather than its rationalization. The "knowledge engineer" extracts all of this expertise through a "debriefing" of the expert. The distribution of knowledge within organizations (which is to say, everything which gives processes of rationalization their character) is

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ignored. Expert-systems favor the "star," "the knowledge-base czar." Even if debriefing techniques were extended to include knowledge distributed through administrative channels, the exercise would retain its "ethnographic" character, a documentation of knowledge-in-use rather than the implementation of a specifically instrumental rationality. I suggest that something like a principle of "erasure" is at work as expert-systems invade domains of knowledge and practice. They will isolate knowledge and fragment institutions, slicing across social organization, leaving here a human being, there an expert-system, as networks are emptied of their contents (both human and intellectual). Organizations will become more sparsely populated, thinner, less structured and more horizontal. There will be experts whose expertise consists in managing an environment that includes expert-systems — second-order expertise also to be extracted. This scenario defies description and analysis along any kind of Weberian lines. (And what are the prospects for an emancipatory social movement, modeled on worker resistance to automation, whose rallying cry is "Bring Back Bureaucracy"?)

As social structure is erased, knowledge itself loses its depth, its foundation on first principles. Expert-system knowledge is *surface* knowledge. It is "learning from mentors and experiences."[2] There is a lateralization of knowledge. By this I refer to the requirement that knowledge from a variety of sources, and collected for all sorts of different reasons, be treated as equally plausible (a similar principle is at work in television news coverage). The Weberian project of "disenchantment" is suspended. Expertise is whatever experts do. There are expert-systems for traditional Chinese medicine, astrology, horse-racing, computer dating, French cooking, real-estate investment. Expert-systems prepare income tax returns, troubleshoot nuclear reactors, evaluate the political stability of nations for potential investors, plan legal cases and make legal decisions. The technology does not presuppose rationalization along any particular lines, nor does it attempt to construct a rational "model" of a domain. It merely assembles the appropriate expert "lore" — without judgement and with no attempt to integrate or generalize according to universal criteria.[3] As

2. This characterization of expert knowledge comes from Paul Harmon and David King, *Expert Systems: Artificial Intelligence in Business* (New York, 1985), p. 33, who provide an overview of current developments.

3. The following example from Donald Mitchie, *The Creative Computer*, (London, 1984), p. 48 illustrates the point: "Douglas Lenat of Stanford relates how the expert-system company set up by him and his colleagues was visited in its early days by a gambler from Las Vegas who wanted to build a system for shooting dice. He rattled off 50 to 100 rules along the lines of, 'If there has been a six, hold the dice *this* way.' They were just the sort of rule that knowledge engineers need. The Stanford people listened in fascination. Eventually, as Lenat comments, 'It was only our fundamental beliefs in the workings of the universe that got us to push him out the door.' " (p. 48) But Lenat and his coworkers were just displaying the lingering prejudices of their own training. There very well may be a market for the gambler's product — which in any case would have more to do with his own standing as a "star," an acknowledged expert.

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the technology migrates downward onto microcomputers, and into the form of inexpensive software packages, it will come to occupy a place in contemporary culture strikingly akin to shamanism and divination in primitive cultures. The pressure toward system rationality — the technology of social control that so worries most conventional critics of computers — relaxes and is replaced by a heterogeneous assemblage of partial and incomplete "rationalizations."

The paradox is that expert-system technology is *more* dependent on human mediation, not less so. AI in general stands in a parasitic relation to the interpretive judgement of humans. Donald Mitchie, for instance, leading British AI researcher, relates an expert-system used to manage emergencies on seagoing oil platforms.[4] As a physical system, the oil-platform in its environment is extremely complex. Nevertheless a deterministic (i.e., nomological) description is possible in principle. However, to achieve that level of description for every combination of possible conditions remains out of reach for all practical purposes. A simulation of the behavior of the physical system will, on the other hand, be too simple to be useful in managing an emergency situation. What the expert-system does is substitute a second-order, mediated interpretation of the behavior of the system for a first-order description. Rules take the form of: "this is what an experienced expert human would do in a situation like this." The physical system retains a nature-like opacity that is punctuated by expert interpretation. Precisely the complexity of technologies makes this strategy acceptable. AI does not create the problem, but represents a reflex to it that has all the apparent advantages of a "human" response to inhuman technology. In the first instance, it borrows the legitimacy of the human expert; in the long-run, its legitimacy depends on its capacity to slip into social settings in reassuringly human ways.

Mitchie concludes that the ability of AI systems to successfully interpose between people and complex technologies will depend on their capacity to give a seemingly human account of their reasoning — that is an account recognizable in common-sense terms. Mitchie speaks of a "human window" where the behavior of the system is "scrutable."[5] Outside of this window lies a range of what may be technically adequate responses that are nevertheless inscrutable in so far as their adequacy is hidden within the details of the physical system and not accessible to common-sense reasoning. The possibility exists for a "lunatic black box," where we have no way of deciding whether the machine is being exceedingly clever, or is in fact malfunctioning. Trust becomes a matter of blind faith, or faith in abstract principles (which may amount to the same thing). Mitchie sees that this cannot be a satisfactory guarantee for complex systems. Thus the legitimation of AI technology is a hermeneutic problem, not a technical one. Likewise, we can no longer depend

4. Mitchie, *ibid.*, p. 36.
5. Mitchie, *ibid.*, pp. 68-71.

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on the opposition lifeworld/system to crystallize demands for a restoration of the "human" dimension in a world of machines. AI *is* the human dimension. Under these conditions, the lifeworld itself is problematicized, relativised.

A second question raised by the Habermas system/lifeworld dichotomy is the question of a homogeneity of interest in the computerization of society. Here, too, AI technology has some important implications. The question, in the first place, arises from the characterization of contemporary society as "postindustrial society," "information society," and so on. The quantitative enlargement of the stock of information, and its monopolization and manipulation by powerful organizations, are the *sine qua non* of the postindustrial society. Daniel Bell, for instance, identifies the information society with the technology of social control — systems theory, game-and-decision theory, linear programming.[6] The application of these "intellectual technologies" to the accumulating wealth of information may be seen as an extension of a monolithic system embodying the principle of social domination. Habermas has made this account of the system side of postindustrial society his own — both in the narrow sense of "the self-regulation of cybernetic systems" and more broadly in his absorption of Parsons' functional model of social systems. Following this line of reasoning, the interest in social control defines information technology, and this interest is uniform across the range of institutions.

The assumption of a homogeneity of interest has not gone unchallenged. French writers on postindustrial society have characterized the information society in terms of its potential for creating and aggravating conflict. Postindustrial society is an "uncertain society," "the locus of an infinite number of decentralized, unexpressed conflicts that do not respond to a unifying analysis."[7] Lyotard, in particular, has accused Habermas of upholding a "trivial cybernetic version of information theory."[8] Lyotard rejects the characterization of postindustrial society as a unified totality enforced through technocratic social engineering. He also rejects Habermas' demand for the preservation of spheres of cultural and psychic autonomy in opposition to technocratic imperatives. What is false in the Habermasian dichotomy is the assumption that one can neatly separate technological and cultural imperatives. Lyotard describes the information society as "many different language games" which in turn give rise to "institutions in patches."[9] One need not assume a monopolization of information within postindustrial society. Information is freely collected by all sorts of people for all sorts of reasons, and

6. Daniel Bell, *The Coming of Post-Industrial Society*, (New York, 1973). p. 29.

7. Simon Nora and Alain Minc, *The Computerization of Society*, (Cambridge, 1980), p. 134.

8. Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge* (Minneapolis, 1984), p. 16.

9. *Ibid.*, p. xxiv.

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empowers all sorts of groups (excluded are those outside of the "game" entirely).

French writers emphasize the "agonistic" character of an information society, while Habermas' scheme leads him to focus on its regulative aspects. The French writers, on the other hand, see in these "loci of conflict" the potential for emancipatory change, and have assimilated these features of an information society into a political vocabulary that includes terms like decentralization, deconcentration, autonomization.[10] In this, they expect to realize some of Habermas' aims *through* the technology rather than in opposition to it.

The quantitative accumulation of information in vast data-banks throws the problem of interpretive schemes into relief. Databases are managed by pattern searching and selection. In fact, database management more and more merges with artificial intelligence technology. Artificial intelligence in turn embodies the motives and points-of-view of a variety of social groups. The ability to both represent and seek out more and more subtle patterns increases as the technology becomes more sophisticated. At the same time, natural-language processing of growing sophistication provides easier access to the conceptual machinery of AI — at least for those who belong to a community of users. Humanistic critics of the technology may be correct in asserting that the fullness of everyday life can never be captured by these programs. Their operation depends on the isolation and restriction of domains. The fragmentary and domain-bounded character of these artificial subuniverses is precisely what makes it possible to exhaust their semantic potential and resolve ambiguity. But the world of everyday life is not inviolable; it is already being absorbed, packaged, and dispersed by information technologies. The fragmentation of the social universe into overlapping but disconnected groups with rival interpretations and varying motives is already a sociological reality. AI programs "fix" the interpretations that reflect the motives of heterogeneous groups. There can be programs that respond "intelligently" for La Rouchies, Amnesty International, IBM, and the CIA. In each case the domain is artificially restricted, and the programs embody the conceptual structures that render interpretations unambiguous. And in each case the programs can carry out the intentions of their human patrons, working over the same databases, looking for interesting patterns and promising angles. But rather than resolving differences through communication, or even opening those differences to straightforward conflict, the more likely line of development is coexisting interpretive ghettos. With growing sophistication, AI programs can be expected to carry forward their own versions of reality, as they patch over lines of cleavage. The end result will look more like Alice in Wonderland than Habermas' ideal speech situation.

AI has set itself the goal of reproducing common-sense reasoning. In his original proposal for the "imitation game" as the measure of artificial intel-

10. Nora and Minc, *op. cit.*, pp. 53-56.

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ligence, Turing acknowledged this as the key aim for research and development. The fragments of dialogue that Turing presented indicate a computer intelligence no better at instrumental tasks than a human intelligence (e.g., the program comes up with the wrong answer to a calculation done in its "head"). Instead Turing expects the computer to be able to exercise ordinary judgement and, most of all, simply carry on a conversation.[11]

The most important organizing concept for this purpose has been Minsky's proposal to represent knowledge in terms of "frames."[12] Under this name and others, such as Shank's "scripts," the concept has been employed to handle natural-language material and facilitate life-like interaction between human and computers. Frames are, in fact, data-structures modeled on everyday-life as it has been described by sociologists.[13] Stereotypes or "typificiations" are one such feature of everyday life knowledge. In Minsky's words, a frame is a "data-structure for representing a stereotyped situation, like being in a certain kind of living-room or going to a certain kind of party."[14] Frames may consist of nested subframes. Frames may overlap in the sense of sharing common elements, yet need not be consistent with each other. One of the hallmarks of the frame concept is the *default option* — an idea that has penetrated the larger culture (e.g., the default food for the "birthday party frame" is cake and ice-cream). Frames are a way of managing the complexity of ordinary social knowledge by locating it contextually. At the same time, frames allow knowledge to be reconstructed schematically; once the appropriate frame is identified, the situation at hand can be compared with the relevant frame and knowledge filled out through deduction. As a basis for social interaction with computer systems, it allows the computer to assume an enormous lot, while interrogating human actors in an "intelligent" way to arrive at specifics.

Minsky wants to make explicit all of the implicit contextual knowledge of everday life. Critics of the AI project like Hubert Dreyfus acknowledge the basis for the frame concept in phenomenology, but insist on the impossibility of the task of reproducing the entirety of an ordinary human's knowledge of the world as an organized collection of frames. Dreyfus, who operates from a Husserlian conception of the lifeworld, sees Minsky following in Husserl's footsteps, forced to include more and more of the "outer horizon," "the subject's total knowledge of the world," or the "background of cultural practices

11. Alan Turing, "Computing Machinery and Intelligence," in E.A. Feigenbaum (ed.), *Computers and Thought* (New York, 1963), pp. 11-35. Turing's essay was written in 1950.

12. See Marvin Minsky, "A Framework for Representing Knowledge," in Haugeland, *op. cit.*, pp. 95-128.

13. See Erving Goffman, *Frame Analysis*, (Cambridge, 1974), and Alfred Schutz, *The Structures of the Life-World* (London, 1974), for two accounts of the organization of everyday life.

14. Minsky, *op. cit.*, p. 96.

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and institutions" as part of the context. Dreyfus claims that Minsky has set himself an "infinite task."[15]

In the same paper, however, Minsky explains one of the principal advantages of knowledge organized into frames. Frames provide an alternative to the "logistic approach" to thinking using mathematical logic as its model: " 'Logical thinking' is not flexible enough to serve as a basis for thinking . . . . The consistency that Logic absolutely demands is not otherwise usually available — and probably not even desirable! — because consistent systems are likely to be too weak."[16] The Husserlian notion of context that Dreyfus defends is too strong; it requires a global coherence that can at best be described dialectically (i.e., hermeneutically). Frames in AI are merely oppositional; they just delimit boundaries without even attempting to recover a unified, and unifying, subject. Minsky wants a way of managing contradiction in social life. Frames sidestep the whole question of the rationalization of life-practices. They provide a way of holding separate mutually contradictory practices and point-of-views. This is how frames have been implemented by specific programs to provide a quasi-human interface to AI systems. The programs depend on a conventionalization of action that has already been accomplished by human actors. The programs can make the normal assumptions, ask the usual questions, etc.

Schank's work at Yale has revealed how much can actually be done by programs that abandon the traditional Chomskian/syntactical approach to natural-language processing in favor of an approach that directly "computes" meaning.[17] What Schank has abandoned is in fact the "communicative competence" that Habermas claims underlies every speech-act. Schank frequently calls what his programs are doing "understanding," but in fact they are increasingly sophisticated guesses in the dark. They use a variety of cues to select interpretations based on a catalogue of meanings organized into knowledge-structures that reproduce structures of everyday life. That they work, which they do, suggests that for most practical purposes (purposes for which AI is intended) communicative competence can be dispensed with (Derrida teaches this, but so does a good sociologist like Goffman, who describes a world of impression management in place of normatively-oriented action).

Schank has a battery of programs that do such things as summarize and answer questions about stories, skim news off the UPI news wire (including a program able to draw inferences in selected domains — for instance, that "terrorist attacks in Spain are often shootings of policemen in bars by Basques"), and recognize human plans and motives in accounts of behavior fed to it (one

15. Dreyfus, *op. cit.*, p. 182.

16. Minsky, *op. cit.*, p. 127.

17. This discussion of the work of Schank and his group at Yale is reported in Roger C. Schank, *The Cognitive Computer* (Reading, Mass., 1984).

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program, BORIS, is able to disentangle a long melodrama about a lawyer and a divorce case, answering questions about the significance of individual events in terms of more distant goals). Schank's group developed a program that would simulate the political positions of a U.S. senator, answering questions as the senator might. Another program, CYRUS, takes the output of the news skimmer and builds a model of the memory of a particular person (in this case the professional and personal history of Cyrus Vance). The program answers questions as if it *were* Cyrus Vance (in effect, it holds a new conference). In one instance, when asked whether Mrs. Vance had met Mrs. Begin, it just guesses by searching its memory for a social occasion occurring on a trip where both men were accompanied by their wives.

Schank sees programs like CYRUS as precursors to database programs of the future, where the database reorganizes itself continually as it comes to know what it knows. This is a world of textuality gone wild. Talking programs are after all just talking texts. The merely indicative signs (tokens) out of which programs are built (which includes the "data") are not supposed to come alive like this. But so-called "natural-language" processing is, in the first instance, possible because the domain has been sufficiently narrowed that ambiguities are manageable. In the second instance, the interpretive scheme is simply iterated in other domains, producing an "effect" of understanding. What the limits of iteration may be is hard to guess, but the limiting case remains "nonsense" programs like ELIZA, the robot psychiatrist, that produce the "effect" of comprehension with responses that embody no interpretive structure at all (just empty gestures). The reason that these "effects" are possible has nothing to do with the instrumental character of the technology. Responsibility lies with properties of the lifeworld. The Schutzian account of common-sense in fact is full of all sorts of unseemly properties — stereotyping, jumping to wrong conclusions, prejudice (one of the more interesting early AI programs simulated an arch-reactionary, a "mechanical Goldwater" that found a communist conspiracy in everything it digested).[18] Nothing is accomplished through an over-simple identification of dehumanizing forces and AI technology.

There is a continuing drift in AI away from syntactical analysis and the accompanying notion of communication between speakers toward looser, more associative approaches to understanding meaning. The so-called "New Connectionism" carries this tendency forward into truly unknown territory. Connectionist models do not process symbolic information at all; instead, a vast array of processing units represent knowledge in an aggregate way through their interconnections. There are no tokens signifying facts. Knowledge as it is presented to the outside is a side-effect of a system of "competing" elements settling into a temporarily stable condition. Daniel Dennett has

18. This and similar programs that simulate non-rational ("hot") cognition are described in Margaret Boden, *Artificial Intelligence and Natural Man* (New York, 1977).

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likened the relationship between external semantics and the statistical interactions out of which connectionist models are built to the relationship between clouds and the physics of water particles — in his words, "computational cloudology."[19] Connectionism is based on a loose analogy to the brain. But most connectionist models make no attempt to copy neurological structures. "Massively parallel processing" has in any case become feasible because of breakthroughs in chip technology. But part of the continuing appeal of this kind of computer architecture is that it might be able to learn and grow, absorbing and reproducing knowledge-structures from the environment, without being explicitly programmed to do so. It might do so in ways extremely sensitive to instabilities, discontinuities, and turbulence in its environment precisely because these are characteristics of connectionist models themselves. Connectionist models abandon the binary logic that has been the foundation of symbolic information processing since the beginning. This means that propositional logic — the logic of truth values — can no longer be used to validate programs on the micro-level. This also means that programs can no longer be understood in terms of following rules in a predetermined sequence to arrive at correct conclusions. The nomological underpinning to computer technology goes. In Dennett's words, "the system settles down after a while not on the (predesignated or predesignatable) 'right' solution, but only with whatever 'solution' or 'solutions' 'feel right' to the system." What remains is pragmatic validation — the operation of the system in its external social context. Here, finally, the computer stands on the same shifting ground as its human counterpart.

What, then, of the prospects for human emancipation? On the one hand, the existence of AI is just one piece of evidence indicating a general destructuring of instrumental reason. This is clear even from AI's confused pedigree — is it engineering or science, psychology, philosophy, or sociology carried on by other means? The dissolution of a unifying scientific world-view leaves in its wake a collection of technical practices and increasingly powerful instrumentalities (nevertheless situated within prevailing relations of power and exclusion). At the same time, modernism has stripped the lifeworld of the mythic elements that traditionally guaranteed stability and certainty. Another way to look at AI is as a means of reanchoring the lifeworld after it has been set adrift, of recovering a kind of minimal (albeit "artificial") working consensus. Here AI resembles mythological reasoning (as described by Levi-Strauss); both the AI program and the "savage mind" seek closure for the symbolic universe. That AI, as the mythological decomposition/recomposition of the social world, is pursued according to the logic of capitalism is no more surprising than the fact that the other great mythological exercise of modern society,

19. For a discussion of New Connectionism see Daniel Dennett, "Computer Models and the Mind — A View From the East Pole," *TLS* (December 14, 1984), pp. 1453-1454.

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advertising, also expresses the logic of capitalism. The Habermasian dualism of lifeworld/system is of little value in conceptualizing these phenomena. Instead, in the name of autonomy it aims for another kind of sacralization of the lifeworld, where the symbolic elements of pre- (and post-) modern mythologies are finally banished. The danger here is simply that *lebensweltliche Philosophie* will degenerate into *Lebensphilosophie*. Something like this has already happened with what is probably the most common way of expressing resistance to computers — namely to contrast the capacity of machines to "think" with the human capacity to "feel."[20] In this dissociation of thinking and feeling, all of thinking is handed over to computers and humans are left to cathect experiences for which they are no longer responsible. This is exactly the opposite of what Habermas intends. But it is hard to see how the demand for autonomy in a world of machines can avoid taking this form, at least on the popular level. In the Habermasian framework everything depends on clearly demarcating the instrumental and the normative from *within* social action; once this distinction is blurred, autonomy is easily misunderstood as just another name for spontaneous self-expression.

20. This point is made in Sherry Turkle, *The Second Self: Computers and the Human Spirit* (New York, 1984), p. 63. Turkle provides an extensive investigation of the ways in which people understand themselves in a world of computers.

Alienation, Freedom and Utopia: Interview with André Gorz

Rainer Maischein and Martin Jander*

If we look at the titles of your works, from* Strategy for Labor, *to* The Actuality of Revolution *up to* Farewell to the Working Class, *all pose political and sociological questions which do not immediately reveal the philosophical dimension of your thought. Do you see yourself primarily as a sociologist, revolutionary theorist, political strategist or philosopher?

* This interview originated in the context of a working session of the DBG-Bundesjugendschule Oberursel in 1983. There, Daniel Cohn-Bendit, Bernd Rabehl and many young union members discussed with Gorz the theoretical and union-political implications of his theories. The talk and a summary of the discussion are available in detailed minutes: *Abschied vom Proletariat? Eine Diskussion mit und über André Gorz,* 2nd edition, edited by the DGB-Bundesvorstand, Abt. Jugend, Postfach 2601, 4000 Düsseldorf, 199 pages. The following abridged interview is appended to those minutes from page 163 on. A small section of it appeared in the *Gewerkschaftlichen Monatsheften,* 1/1984. Translated by Warren L. Habib.

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You are right. I perceive myself as a stranded philosopher trying to smuggle my original philosophic reflections into seemingly political or sociological matters. I understand "philosophy" as the original question which Western philosophy has posed since the Greeks. When am I truly myself, that is, not a tool or the product of outside powers and influences, but rather the originator of my acts, thoughts, feelings, values, etc? This immediately raises the question of the prehistory of the individual — for there is no subject other than the individual — his relations to his body, environment, society and the question of the possibility or impossibility of ever shaping that relation such that I could regard it as "my own." Similarly, this also raises the question of alienation and its possible overcoming. I do not conceive of philosophy in the same way as Hegel or the great system creators, but rather as the endeavor to understand, to probe, to adopt, to liberate, to create oneself and what one is. Life, and especially human life, is self-creation — "autopoiesis," as systems theorists are beginning to say today and as biologists are rediscovering. Naturally only a Being that also creates himself, to the extent to which he does this, is able to understand himself, to answer for himself, and to free himself.

But today there is no public, no "market," no publisher for philosophical works. They have become a specialty of professional philosophers. If you do not teach in a university, and for me that was out of the question, you can only practice philosophy while you are employed in some other sphere. But then, unfortunately, the investigation and foundation are always insufficient.

In the 1950s, you wrote books which were entirely different from those you write today. Two of them,* Foundations for a Morality *and* Morality of History, *are not available in English. What are these books about and what meaning do they have for* Strategies for Labor *and later works?

Foundations for a Morality was an investigation into the philosophical questions I have just mentioned. It was a crazy undertaking that was originally supposed to be three volumes: the first on the subject in relation to himself and the world, in which naturally others always have a say; the second on the relation to other subjects; and the third on the relation to society, to the collective. Of the second volume, only a rough draft exists, written in 1948. Parts of the third volume appear in both *Morality of History* and *Farewell,* but until now I still have not begun the third volume because it took 8 years to really work through the first volume.

And when no publisher wanted the stuff, (what should a publisher do with a 600 page philosophical book by an unknown? He could only lose money.) I experimented with an application of the first volume on myself — and that was *The Betrayer*. I found a publisher, because Sartre wrote a very beautiful and long forward for me. But Sartre was not interested in *Foundations*, which was not published until 20 years later. *Morality* was sort of a continuation of *Being and Nothingness*. It dealt with the questions which Sartre threw out and never

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answered: What is "Authenticity?" What constitutes the "existential conversion" and how does it come about? What does it mean to make freedom the highest value and the source of all values at the same time? You cannot get any of these answers from Sartrean ontology. You must bend it, differentiate it, recast it, show that we always exist on different levels, corresponding to the differently structured relations to Being and to Value: a first level of physical existence and the correspondingly unmediated life-world, which is always conditioned and determined culturally and socially, and is also the most obliterated and inhibited; a second level of the conscious perception of the immediately present; and the third of teleological praxis. These three levels — past as factuality, present and future — correspond to three value types: the vital, the aesthetic, and the ethical-practical. They can never be unified, never brought under a single denominator. Vitality and enjoyment of life, comforts; joy of the beautiful and of artistic creations; and joy of liberating creations can all be united in one person — that is always the ideal — but not in the same moment. For that reason, a temporal division has always existed — into days, weeks, years, etc. The ideal is an existence of frictionlessly moving over from one level to the other, without sacrificing or subjugating any level. You can find that again in *Farewell*.

Yet, this ideal remains unreachable. The empirical world is not created so that freedom can serve as the means of its self-realization. Alienation exists in the impossibility of using the given as a means to a purpose worthy of life — or in the necessity of giving up all other aims and values to the preservation of naked life. Yet, it would be impossible to renounce the higher values in favor of lower ones, thereby accepting the alienation of the absolute value scale, were not the evaluation of aesthetic values and freedom optional and even free, and if the spontaneous inclination to flee from freedom did not belong ontologically to existence, like freedom itself. I tried to demonstrate this in phenomenological descriptions of different "attitudes," like fanaticism, resignation, worship of the strong or "ruggedness," which all concern the vital values; or, concerning the aesthetic value of privileged stances, i.e., the cult of spontaneity in poets, mystics, adventurers, players, etc., and their existential failure. The method of self-questioning and analysis demanded by the "moral conversion" takes a good third of this volume. It found its application in *The Betrayer*.

The *Morality of History*, which again deals with the theory of alienation, investigates the following question: What is and what determines the fact that the unfolding of personal freedom is made impossible through the factual situation? And further: how can, as one finds in the young Marx, a class be predetermined to liberate itself and all spheres of society? Self-liberation as pre-determination is self-contradictory, and I wanted to show, against diamat dogmatism, that the proletariat is revolutionary only to the extent that all of its members become subjects of negation and the re-appropriation of the material relations which have formed them. There can be no objective compulsion

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behind this; otherwise there would be no problem concerning revolutionary consciousness and strategy. There can be no compelling necessity to liberate oneself.

Further, the book described the alienation of consumers, the "massified people" and entrepreneurs in the so-called "affluent society" through the division between work and consuming, so that liberation (i.e., overcoming of alienation) can never be accomplished on only one of these two levels.

After* Farewell to the Working Class, *some claimed that this would also be farewell to Sartre. But, on the contrary, we find some continuity to* Paths to Paradise*: the same existential philosophical foundations, the same attempt to search for the dissolution of alienation and the liberation of the individual. What meaning does Sartre and his existential philosophy have for you? Is there a break?

Sartre was often misjudged politically. Until 1952, the French Communist Party (PCF) saw him as the major ideological enemy and he was cursed in Moscow and Paris as a "stinking jackal" and a "typing hyena." Unfortunately, Lukács supported that. In 1947, Sartre was a co-founder of the neutralist, leftist, socialist RDR. When it was seized by the Trotskyists and splintered, Sartre withdrew. The RDR collapsed and all that remained was the Trotskyists' hate for Sartre and vice-versa. Sartre was a communist fellow-traveler and a supporter of the peace movement only between 1952 and 1955. After Budapest, he broke publicly with the Communists, but he was sympathetic towards Khrushchev for a couple more years. I never broke with Sartre, but in the late fifties, he began to regard the anti-colonial insurrections (especially the Algerian nationalists) as the carriers of the world-revolution and he accordingly wrote off the western proletariat. I did not share this opinion, and my *Strategy for Labor* responded to his disavowal of a metropolitan revolution. Beginning in 1969, we again differed over the Maoists, whose religious-dogmatic bearing I could not stand. When I discussed this in *Les Temps Modernes*, he did not try to stop me. Sartre never broke with anyone on political grounds. They were never important enough to him. Until the end, he saw in me someone who used his philosophical works as a building block. Thus, *Farewell* can be seen as an application of the *Critique of Dialectical Reason*. I believe that that book would have pleased him.

The question of alienation seems to play a central role in French discussions. It is not only the central theme in your philosophy but also in the work of Henri Lefèbvre, where alienation and mystification are closely linked. Where does this specific interest come from, and what were the grounds that made it a central category for you?

For me the centrality of the concept came from the question of how can an Essence misunderstand, disguise and realize itself in such a way that it stands in contradiction to its own Being. Social conditions played no role at first.

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However, right from the start, everyone is socially and materially condemned to alienation. Personally, I see myself — as do many others — as belonging to no society, group or nation and always confront these collective creations with amazement, as something accidental that never would have been wanted by all those produced by its actions. This automatic character of alienated action is wonderfully presented by Marx in *The German Ideology*.

In Germany, the alienation question played a somewhat important role in the 20's and the 30's, but its meaning then faded, even for the Frankfurt School, because there was no Communist party in West Germany and also no discussion of Marxism. As for East Germany, certainly a Communist party, but in no way a discussion.

In France and Italy, one could make do with the Stalinist diamat-catechism, but only if one expected liberation to come from the Soviet Union and not from the worker's movement. Unlike the PCF, the Italian Communist Party (PCI) hoped to build a "hegemonic," independent revolutionary party, and could not merely promise the end of exploitation, since the exploited in the West were visibly better off than the unexploited in the East. The end of exploitation was not a convincing goal if it did not go along with the end of all forms of oppression and, where possible, alienation. The struggle for socialism could only be won as a broader liberation struggle.

But one could only say such things if one was ready to be critical of the Soviet Union. The PCI was ready, but the PCF was not. For the latter, as for dogmatic Marxism, socialism did away with the individual subject, which was only a petty bourgeois illusion. Socialism, on the other hand, allowed all to experience society as an omniscient totality, in which individuals are abolished and their real Being is defined by the party. The individual has therefore no independent consciousness but only the ability to recognize his true Being from what society thinks and demands of him. This religious relation of individual to party demanded by the PCF was irreconcilable with the alienation problematic and made for anti-Stalinist dynamite.

In our view, the* Farewell to the Working Class *represents an endpoint in a development, a resolution of an ambivalent relation to the Communist Party, the socialist state, and the Communists' theory and practice. Nevertheless your work has a Marxist strain. What meaning does Marx and Marxism still have for you?

There is no theory like Marxism for understanding the capitalist economy. At different points, it is out of date or questionable, but you cannot manage without it if you want to understand the development, logic, contradictions and crisis of the capitalist world economy.

Likewise, the philosophical part of Marx remains fundamental: his understanding of humans as "creator of themselves"; his theory of alienation, primarily from the *German Ideology*, which contains a fantastic philosophical wealth of insights and ideas, but it is also developed in the *Grundrisse* and the

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posthumous chapter 6 from *Capital*, vol. 1; his philosophical anthropology, in which the fundamental "universal unfolding of the individual" is laid out — while political economy and economic values are bound to disappear. For Marx, this is the sole meaning of historical development. That does not entail any inevitable necessity, but only that there is no other sense in history and if we miss it, we will fall into barbarism. Here I part with the Marxist theory of history which, like the Hegelian eschatology, starts with the end of history in order to interpret history itself.

The economism of most Marxists always went against my grain, but with the help of Marx it can be refuted: economic values are never fundamental and can only be seen as fundamental if the means to an end in itself are extolled, as happens in capitalism and technocracy. Then every value reference disappears and only relative value — so-called exchange value — remains; the highest, absolute value is money, but in itself it is worthless. You can find it all in Marx, who took it from Ricardians and Owenists and sees in capitalism a system whose development must lead to its own negation, to the "collapse of exchange value" and of economic rationality. Unfortunately, most Marxists do not know that and for that reason use Marx chiefly as a theorist of capitalism, without asking where the latter could and should be overcome.

Hence some "ambivalence." One can hardly go along with most Marxists about economism and capitalism, and yet there is, outside of Marxism, no intellectual power which could devise a non-capitalist alternative and work for the overcoming of capitalism.

What meaning did the* Foundations for a Morality *have for this new book,* Paths To Paradise? *The problematic of the individual who is seeking his way remains at the center, but this way-seeking is not carried out further. Is this a resumption of the thesis: There is no morality, the only possibility is the choice of freedom?

The choice of freedom is the only possible morality. There can be no other. That has never changed for me, you have understood that correctly. It is not a matter of a theory, but of an insight. You cannot see "freedom" as something primarily political or social. Freedom, in existential philosophy, is closely related to Christian theology: the individual is condemned to it in his Being, it is given to him, or better, it is present as a "having-to-be-free." The only question is whether one flees before this freedom in order to become a tool of something "superhuman" or one adopts that freedom by setting goals and taking the responsibility for them.

Thus, in a philosophical sense, freedom is not something that could be granted or denied to me by the state or by superiors. What it has to do for each individual is questionable, nevertheless one can not talk of duty, instruction, or an ought. Only to a Being that *is* free can freedom be awarded and this or that manner of acting be forbidden or dictated.

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To define morality as the following of directions or codified duties is absurd. Codified manners of acting have as their goal bringing individual conduct into unison with the preservation of an "Order," which is always supplied. Nothing is said about the goals and "morality" of this order; it is always raised to an end in itself. In the conduct of all "by-the-book men," whether functionaries or workers in a power plant, obedience or strict following of instructions is the highest duty, and that means not questioning the purpose or value of the state or of the electricity. The instructed conduct is heteronomous, that is, externally determined, it has nothing to do with morality, but only with the disposition of a totality that should function like a giant machine.

The view that the society has to make the individual functional as part of a giant machine is a thousand years old in Asian despotism and has thwarted there the development of a culture of individual consciousness. Of course, it has not stifled consciousness altogether, but consciousness is denied the possibility of social expression — what we call a fundamental or civil right.

In Europe, the view of human beings as tools of the tools, that is, of the large machines, is relatively new, which makes the victory of technocratic despotism not entirely inevitable. Effective resistance means that the individual himself must question the sense, purpose and value of the super-technologies and reject a worldview that postulates over each and every one of us an absolute superior subject that knows better than we ourselves and determines for us the Good, the Bad, the duties and the Forbidden. Whether one calls this superhuman subject State, *Führer*, Party, *Volk*, God or Nature is insignificant. In every case, we are dealing with the totalitarian negation of the real subject, that is, the individual.

But there are other formulations of freedom, for example, Rosa Luxemburg: Freedom is always the freedom of others of a different opinion. In so far as the concept of freedom always has something do with others, is not morality simply only that I can do everything that I want, and not to be forced to something that I do not want, which would be immoral, only because it would not be free? How does the freedom of one human being relate to the freedom of another?

You have to say that reversed: moral is not "I can do what I want," but rather that which I do, I can want. The "moral Cogito" is practically never found in the question: "Can I do what I want?" but in "Can I want what I do there? Can I want to be, what I make myself here?" Or: "What can I do, that I can also want?" As social individuals, we are always active before we have decided or undertaken something. We come into the world, so to speak, as accomplices, co-producers of this world, because we are born into cooperation and participation. Thus, no one questions himself first and then acts later, each acts first and only later unwillingly questions what he perhaps did there and whether he can answer for it.

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The liberal view of political freedom refers exclusively to the right of the citizen to differ in opinion from the ruling party: "Freedom of opinion." But in that view individuals appear in society as grains of sand in a sand heap: "Do your own thing," as the Americans say. But the question opposed to that: "What can I do that I want and can want to be?" is always included in the question: "How will I appear to this and each other? How will I be in their eyes? On which side do I stand?" It is impossible for the individual to want his own freedom without wanting to acknowledge others and being recognized as free by them, that is, as originator of my own acts and creations. Reciprocity is always reciprocal assessment of the freedom of the other, not simply tolerance. There is general reciprocity and assessment of freedom only if we all are pursuing a common, set goal, that each recognizes as his own, but can only be achieved with and through the voluntary action of all.

To what extent then is social emancipation possible? Is your theory of the liberation of individuals compatible with claims that are social in nature and have social emancipation as their goal?

A collective liberation process which is not experienced by all as individual liberation is just the "educational dictatorship" as practiced by the church, the all-knowing Leninist party, and the armed avant-garde. By struggling for a collective liberation in a manner that makes the individual a pliant tool of a transcendental thing, the means themselves will end up preventing liberation. Collective liberation must also always be individual, and it is important that individuals strive for the collective liberation from their own need, while they close ranks and unite, as Marx demanded, on the ground of their common situation and goals. In order to be able to become the subject of my actions, I must change the world, but that I can do only with all others. Yet there are dozens of forms of working together that need the individual only as a tool, as an obedient soldier.

The question of social emancipation is certainly never put forth by the society itself, because society is not a subject that experiences needs and aspirations. The question of social emancipation is posed only because the real subject, individuals, experience social conditions as irreconciliable with the unfolding of their freedom. That the experience of freedom of each individual is socially denied is the experience of alienation which is common to all of us and which we can overcome only through the common action of changing society.

On the one hand, you present an individual morality of freedom or the choice of freedom. But, on the other hand, we live under conditions which deny freedom. How can freedom arise?

You see a bind because you conceive of freedom as a legal position, and not

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as what it is, the negativity of all actions and each consciousness. Only a being that is free can and should become free: "Become what you are," Nietzsche said. The human is a being that has to make himself into what he is. This fundamental insight of existential philosophy is today held to be valid for all living things by systems theorists — to be sure, only among humans is it conscious or capable of consciousness.

Even an assembly line worker or a prisoner experiences himself as free and indeed as antithetical to that to which society would reduce him. He is not and cannot be what one has condemned him to, and this impossibility to accept such a role is his experience of freedom, which is frustrated and denied, but survives in consciousness as negation, no matter how adverse the circumstances. Also the sharpest oppression always encounters insurrection and rebellion, even when the situation — such as in the Warsaw Ghetto, in the concentration camp, or in dungeons — seems hopeless. Just because each individual experiences himself as free under all circumstances, there is no bind, and therefore circumstances must be created which allow freedom to be experienced.

But is this not a stoicism that is peculiar to Sartre's existentialism: I sit here in the dungeon and have externally lost my freedom, but internally I feel free, happy, and can experience myself as free?

No, it is not like that and neither Sartre nor the incarcerated were or are happy and stoic. The prisoner experiences and declares his freedom through his secretly cultivating unions with his fellow prisoners and incessantly preparing a breakout from the prison or making plans for what he will do after his liberation. In order to experience oppression, one must regard oneself as simultaneously free and therefore treat the oppressive conditions as a negation of one's Being and one's freedom.

Can one be oppressed without experiencing it as such?

I always argued about that with Marcuse. He claimed that alienation in neo-capitalism is so deep that people are no longer conscious of it themselves.

What about National Socialism? There were very many people, of whom one can say, they were oppressed, and yet they experienced themselves as uplifted, recognized, accepted.

In some ways for its followers, National Socialism was a liberation struggle. The *feeling* of freedom and alientation does not necessarily include the *knowledge* of the real grounds preventing freedom. Immediate consciousness and experience is one matter, knowledge of all the facts of a case is another, which depends on an acquired analytical ability to think. Therefore, you can mobil-

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ize the liberation-seeking oppressed for the struggle against "eternal enemies," who are only cheap scapegoats: Jews, Bolsheviks, Slavs, Democrats, the world-wide conspiracy against the good folk. That is easier than studying Marx. The SA did not oppress its members. It was an organization of the humiliated, who voluntarily came together and freed themselves of all these higher values and enemies, in whose name they were humiliated and scorned. They were finally authorized by an authority that was elevated above all traditional values: "in the name of the folk."

You locate freedom in the appropriation of life — as you write in* Paths To Paradise *— in the place where production and consumption coincide. You make it the sphere in which to decide for what, how much and with whom freedom is realizable, and therefore the essential level of existence and liberation. On which grounds?

In the *German Ideology*, Marx showed that "social individuals" experience the results of their cooperation as a foreign power which is opposed to their will. Why? Because the entire process of this cooperation is organized in terms of material laws which no one can see or has command over. It could only be mastered if all of this unseen command were to be posed from the outset as the aim of its cooperation — which would then naturally have to be voluntary and not accidental. Abolishing alienation means creating conditions in which everyone recognizes the results of his social cooperation and his work as created and wanted by himself and if it is unwanted, to be able to abolish it. Thus, this means common self-determination of cooperation in terms of goals, results, and organization.

The market economy as well as authoritarian economic planning always reverse this: the people and their cooperation are determined externally by the exigencies of production, profits and fixed capital; the results and the process of their cooperation are from the outset alientated, uncontrollable. Then that goes so far that the production of commodities is no longer directed by human needs, but rather the needs by the commodities, which demands as false subject their purchase and subordinates the needs. In the market economy, needs become externally determined by certain products, while one praises not the use value, but the symbolic value of a commodity and bestows upon it a certain image in order to appeal to unconscious desires. Individual determination of needs and wants is blocked; the entire commodity propoganda sounds like a constant warning: "Watch out, or else the others will have more and better than you, how will you look then?" Each is thus always addressed as an other, played off against peers. Individual autonomy is prevented. Envy and the fear of being disadvantaged turn into central human relations. Voluntary, appropriate and self-determined social cooperation therefore becomes impossible. Lacks and the feeling of being prejudiced are reproduced on higher and higher levels.

The root of alienation, the external determination, is here the involuntary

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social division of labor; consumption and production are divided. Because no one anymore is the subject of his productive labor, he also cannot be the subject of his consumption. Because we do not manufacture what we consume, and we do not consume what we manufacture, we are "at home" neither in the work nor in consumption, as Marx writes, that is, "we ourselves."

The only possible way out exists in the reduction, wherever possible, of the super-technologies which condition the social division and splintering of labor, in favor of comradely activity, designed not by the market but by community members determining their own needs, and participating in autonomous production based on use value, not exchange value (that is, commodities).

How can this condition be reached?

As for morality, a conscious self-determination in free cooperation with the other is possible only in the context of smaller communities. Only on this level can alienation be done away with. Thanks to the microprocesser, community creation in the proper place can play a predominant role in the satisfaction of needs.

As for the program, two questions: that of content and that of realization. Both questions would be unimportant, were it not true that 1) the program which has always depended on economic growth, full-time employment and growing commodity consumption, has become unreal, and 2) a movement had not developed 15 years ago with decisive values such as self-determination, personal-work, and interpersonal relations. In Denmark and Norway more than 1% of the population is in a movement — "The future is in our hands" — whose members practice and experiment voluntarily with minimal living habits, in order to save extra income for help actions in the starving world.

In *Paths To Paradise*, it is a matter of such movements developing an emphatically anti-capitalistic social concept. That hardly anyone on the political left thinks of how a post-industrial, free, non-capitalist society should look, is a crushing sign for the traditional left's inability to understand innovation.

In* Paths To Paradise*, you delivered an analysis of the present society which prognosticates a collapse of the existing one. Can you transpose the analysis and critique into politics and into a determination of the political outlook, in which certain goals should and can be reached?

Your question makes me think of the failure of all traditional parties and organizations. No one appeals to the immediate material interests and aspirations of wage-dependent persons, young people, the unemployed, and pensioners to be able to make something themselves, that is, both to create and to exchange or simply to give. The only institution which addresses these

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needs is the church, which is registering a growing following both in the West as well as in the East, even among non-believers. This development is dangerous, since the spiritual is divided from the political, and we have apolitical values and valueless politics. Consequently, one day a new fascist party will emerge, which, like the NSDAP, will reject politics and politicians and appeal to xenophobic needs for greatness, unselfishness, sacrifice, discipline, unity, self-respect, etc.

Socialist parties and movements would do well to take an interest in both the theoretical and the practical aspects of a social plan to abolish capitalism, full-time wage labor, and externally determined commodity production, in favor of more voluntary, self-determined cooperation for goals which are ends in themselves, replacing exchange-value with aesthetic, interpersonal or use-values.

The striving for a social form which gives non-economic values precedence over economic values was always the motivation of the workers' movement. They fought capitalism not only because of its exploitation but, at the same time, because it destroyed personal-work and exchange based on reciprocity in favor of the damned coercion towards wage-labor and commodity relations. The wish to create oneself, not to be dependent entirely on buying and selling, to become your own master, is not exhausted in the working class and is even clearer in white-collar employees, since they have more cultural and existential independence. The theme, "less work, so that all can work and live better," is just as old as the union movement and is currently being resuscitated maybe with a little too much reticence.

In the *Paths*, I tried to appeal to unioners and socialists with this and was astonished when they did not realize it. What I suggest has in fact been part of the labor movements' negotiation strategy for decades: anticipate possible productivity increases in collective bargaining agreements, while demanding either adequate higher wages or shorter working time (including early retirement). Under today's circumstances, the demand for decreased working time (and thus more spare time) with full wage settlement is, of course, the more important of the two. It is even being sought by smaller unions in Great Britain and the U.S. and in certain industries in France. But its generalization cannot be attained on the level of single factories or industries. A political concept and state measures are needed. This too is part of the socialist tradition.

There must also be an unconditional break with the law of value, market relations, and capitalist rationality. The subsistence-level income must become independent of the work performed. The ability to meet needs must be the independent variable, and work-time must become the dependent one: another part of the tradition of the workers' movement.

The difference between left and right today should have to do with the purpose of the break with the law of value. Right-wing politicians want to maintain the so-called performance ethic and provide scantily for those not employed full-time, while keeping them shut out of society. Therefore, the left

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must break with the performance ethic. That should be so much the easier, as the ethic is already meaningless for the majority of the workers, condemned as they are to gradual disappearance with the advent of automation.

The market economy is also a sacred cow, which is barely worshipped, but in reality has for a long time been slaughtered. When I propose to finance lifetime-guaranteed income — under the presupposition that necessary social work time is performed in certain quotas — through the taxation of automatically created goods and services, that is clearly a further development of what has already occurred. Prices are already determined more by politics than by supply and demand. All life necessities and social necessities, from agricultural products to transportation and health care, are subsidized, and everything superfluous or cheapened through automation — cars, petroleum products, alcohol, etc. — is highly taxed. The so-called added value or sales tax does not hide the knowledge of real production costs.

Also, look at the development of self-employment opportunities and workshops, which allow for manual as well as cultural production, repair work, etc.; grass-roots co-ops in which in voluntary cooperation, both optional items and social necessities can be locally created. Such institutions, drawing creatively on spare time and new social relations of reciprocity, altruism, and communalism belong to the tradition of the workers' movement and could be pursued both by unions and left parties as an illustration of what is politically possible.

The right to work can no longer be equated with the right to full-time, paid employment, and the right to an income is not the same as the right to a wage. Market production through wage labor must become an activity of secondary importance, if we want to come out of the crisis and go beyond capitalism at the same time.

Does that mean that the preconditions of all political freedom is the re-attainment of the possibilities of self-determination over individual life? The re-attainment of culture, production, and consumption becomes the foundation of a free society?

Certainly. There can be no possibilities for self-determination over personal life, if social life, association with others, is not also largely self-determined. The demand for self-determination, for autonomy, today can only be expressed negatively: through the withdrawal into family or private life. Work and society remain the sphere of alien determination. The importance of the extension of micro-social work and living communities lies just in the following: they are the lacking, but necessary mediators between the private sphere and the social totality. Spare time makes sense only if it can be used towards the free shaping of social relations and cooperation.

If the political left is not in the position to use micro-electronics for this goal, the latter will be used for the forcible internalization of alienation: as self-surveillance, self-normalization, self-testing with the help of home com-

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puters, hence state-financing of the consumption of computer programs. Income can be made dependent on the passing of regular self-testing. Jacques Attali has written about that with the help of a number of examples and about how this "self-surveillance society" is coming upon us.

Ergo, either more micro-social self-shaping and self-participation, or stronger macro-social pressure and alienation.

How do you define politics?

Politics refers to two different matters: the shaping of social relations and environment by citizens and the administration and command of the total social context. The so-called civil society refers to the first. The alienation and autonomization of the total social context leads to a preponderance of the second, and politics becomes a matter of the government; civil society withers away, devoured by state and government.

Politics can only continue to exist in a democratic form, as citizens' activity, if it preserves both of these dimensions. If the expansion of civil society leads to a total withering away of the state, we will revert to a world of tribes and village communities. But the state and its central administrative apparatus have become much too big and difficult to control, and have to be broken up in order to allow for a decentralized and micro-social self-administration. Microelectronics can be helpful to that end because it facilitates both decentralization and communication as well as allowing for more spare time.

On the question of the marginalization of wage labor through technological developments: you regard this as a desirable process because it does away with the identification of the producer with the product, which you treat as a conservative, stabilizing element in the labor process. It is thus not only that productive labor can be marginalized, but that in your plan it also should be.

It is not productivity that should be done away with, but rather wage-dependent and externally determined labor. Self-determined activities can certainly also be productive, even if not in the capitalist sense of "creating surplus value": they will preferably create aesthetic and use-values rather than economic value. The priority of the economic is only 200 years old and causes a form of general schizophrenia, for everyone experiences in daily life that economic values are valueless from moral and aesthetic standpoints. Affection, love, tenderness, children, house pets, landscapes have no economic value and are sacrificed to economic exigencies by industry. But as soon as everyone comes home from work, they want to have an artificial niche where non-economic values take precedence. Such values are not necessarily incompatible with work; they are only irreconciliable with wage labor aimed at the greatest possible profitability.

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The break with the ruling rationality that you described in* Paths *demands a new form of politics. How will it appear? To which strengths of the worker movement are you trying to appeal?

In order to make these new forms attractive models instead of isolating them as "alternative experiments," different precincts, city councils, and eventually regional governments would have to take an interest in the matter by safeguarding organizations such as neighborhood and workplace cooperatives, the possibility of demonstrating and expanding innovative ways of living, producing, exchanging, and associating. For instance, different self-organized forms of job sharing, voluntary neighborhood service, etc., could be tried out, as well as consumer and service cooperatives, repair and personal-production workshops, and even real control over time, as the government of Quebec in Canada has introduced: civil service workers are required to put in 140 working hours a month, but with minimal restrictions, they can arrange their work and time as it suits them.

There is no rational, sound reason why the SPD and the union movement should not test the liberating potential of the new technologies, organization principles, and life-styles. If they do not do it, then single employers will do it with an entirely different intention: so, for example, flex-time is an ostensible concession, that meets half-way the demand for time sovereignty in a way that is really a rip-off. Just because we have arrived at a turning point, we need laboratories — neighborhoods, communities, middle-sized cities — where new forms of social and political activity can be explored.

There are no longer any uniform, generally valid formulas. The ongoing cultural as well as technological changes contain the germ of a polymorphic society in which, as in nature, much is tinkered with and diversity can be a source of riches and further development, not of ruin. In West Germany and in England, it is not especially bad in this respect. Regional governments and mayors have much more flexibility than in France (where everything must be approved by the state head), and even the SPD as well as the Labour Party remain decentralized: different tendencies remain alive within them, and the party is not closed to developments which put it politically and structurally into question. The view of the state which sees the central government as guarantor of the framework to shorten work-time, introduce real time-sovereignty, and establish service cooperatives, personal-production, etc., stands entirely in harmony with the socialist tradition. The articulation of a "work-time politics," which promotes the creative, even social, use of the increasing spare time and makes it possible through social organizations, would meet a very wide-spread demand. If the political left is not ready and able for that, we will progress further in the direction of a self-surveillance-society and dual economy in the Mexican and Japanese manner.

What of the responsibility of the intellectual for his analysis? Given your sense of ur-

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gency and the need for a decision, must not the political form be made clear? We know of analyses and plans from the twentieth century which abstractly demanded a decision, which demanded urgency — and the wrong powers profited.

You are right, but let me turn the problem around: how can an intellectual today endow his analyses with a political program without becoming untrustworthy and being discredited by traditional politics? As long as there are no parties, organizations, or movements which can transform and achieve the necessary change politically, intellectuals can only turn to the people who, within existing movements and organizations, are seeking the same goals. Hence the necessity of presenting the urgency of the decision as clearly as possible, preventing an occlusion of the problematic. Intellectuals cannot do more than nourish the discussion and join in it. The insights, which they take pains to mediate, will lead to political action if the pressure of events forces an immediate decision and carries the problem to extremes. If there are a sufficient number of conscious, politically active and determined people, something will happen.

For example, we have known about atomic bombs since 1945, but there was never so meaningful an anti-nuclear movement in Western Europe and in the U.S. until today. Through the urgency of the impending decision, the problem was pushed to the limit. It is noteworthy that the movement came together, although — or rather because — it had no positive political alternative to offer. What it offered was something else, which broke with the ruling rationality and pushed at least a part of the political left to new reflections.

As concerns the world economic crisis, we are at the beginning of a lengthy process which will last several decades. The worst is still in store for us, namely the financial collapse of different big banks and possibly even states. Such collapses, or the means used to prevent them, will deepen the crisis of society and its ruling values. The seeds, which were planted by the alternative movement and by the suggestions and theories that break with the ruling rationality, could then quickly develop. Advocates of a society of self-activity independent of exchange-value will confront advocates of crisis management with a dual economy and self-surveillance. So that no misunderstanding arises: I do not *wish* for the sharpening of the crisis and financial collapse in order to increase the chance of a new foundation of society. On the contrary, because it cannot go on this way, we must seriously consider radical alternatives to existing society.

At the end of* The Betrayer*, one has the impression that the programmatic plans for the* Paths To Paradise *are pre-formulated. One finds the different levels of the overcoming of alienation, the individual claim to autonomy, and the insight that a part of alienation cannot be overcome. Have you progressed in your project?

You have forced me to look up the passage, and I have found with astonish-

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ment on pp. 305-306 statements that are also present in *Paths* and *Farewell*. For example, "What is offered to us? A narrow specialized life under an employer, who climbs over us and does not know us; the life of an ant, who is forever unable to recognize itself in the shape of the world which it helps to create. Our needs for humanity seek, in order to find satisfaction, refuge in private life, in nightly meetings, small orgies of empty discussions and dreams, through which we overcome this society as well as the unacceptable reality, which the society bestows upon us. And so this society measures out the success of an individual by the number and strength of the means which he acquires in order to escape the common fate, to isolate himself, to build a shell against the world. But to those who do not want to withdraw and consume at the expense of all, but rather want to give, communicate and construct with all and for all, society has nothing to offer."

And then it goes on: "We are the people who, whatever they do or say, can never feel themselves entirely real. A part of themselves remains unrealized: the part of their failure, of their silence, which forbids them to be satisfied with what they live. An absolute distance separates them from their reality. The intellectual is the one who takes this distance on himself, seeks to bring the part of the silence as such to expression ... He will never be a great man of action ... I must discover myself the means for a complete realization ... I do not declare that I will succeed; only that I, like many others, must discover unique means, in order to bring humanity about, and that the highest reward that I can hope for lies in this creative activity."

I had forgotten that I had written something like this. It is close to 30 years ago. The project that is defined there is obviously a literary one, for there are no other means to bring the "part of silence," the unsayable and impossible to appearance. I have come further quite differently than I had ostensibly intended it. I became more modest, spent more time reading newspapers and writing articles and, because of that, lost myself from view. To intervene journalistically somehow in the events — the war in Algeria, the rise of modern technocracy, the crisis of the trade-unions and of dogmatic Marxism, etc. — seemed more important to me than being active literarily. But that was also according to plan: for in addition to the project you quoted, I had also written that "the solution of all existential problems is outside," in the real world and in the squabble with them until the purely personal problems begin to fade.

At particular times newspaper articles had a certain effect, especially in the trade union movement and on high school and college students. I learned much by doing that, and learned to write in a way that makes complicated matters generally understandable. Mostly, it always made me happy when here or there a trade group reproduced my articles. The "highest reward" was thus not exactly the one I had in mind in *The Betrayer*. In this respect, I have already progressed further than I intended: not "in" the initial project, but rather beyond this literary project.

The effect I attained from time to time could naturally not be permanent

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nor have brought to expression what in each of us is condemned to failure or silence. For that, literary or philosophical work is needed. The *Farewell* is supposed to be both: all the "residual values," which are left aside in political theory and praxis, are preserved there in the center. It utilized what is otherwise discarded, i.e., the part of existence condemned to silence and to non-being. If one tries to express the suppressed, suddenly each great social and thought system will appear in its arbitrariness and its brutality. Naturally *Farewell* could not present a coherent theory as a substitute for the usual ones. Nor did I try to. I wanted to show what happens, if one includes oneself as a real, complex subject in political thought. The book should induce the reader to follow such an experiment himself. In this sense, it is a literary work. The theoretical insights which it contains (and are often understood incorrectly) are further discussed in *Paths*, without personal reflections. I hold the *Farewell*, in its intentional incompleteness, for the better and the *Paths* for the more useful book.

I have naturally not progressed in the endeavor to overcome alienation: many hopes have gone astray, barbarism has in the last twenty years made great progress. But the reader who only partly recognizes or discovers himself or wins insights or finds impulses to think in a book, gives to the one who has written it the feeling that it was not entirely for nothing.

*A Century of Genocide**

Mario Baccianini

The fact that the first formal recognition of the crime of genocide (*crimen lesae humanitatis*) took place at Nuremberg in 1945 is extremely significant. Those who, to quote Adorno, record the extermination camps as "working incidents" in the victorious advance of civilization, or see "the martyrdom of the Jews as an irrelevant episode in the context of universal history," fail to grasp the dominating trait of twentieth century atrocities: the perverse secularization of the religious motivations of genocide in modern totalitarian political ideologies. The Nazi regime, with its dystopian vision of a hierarchy of races and societies under German hegemony, represented the most complete expression of this process of total conditioning of the existence of individuals, with all its genocidal potentials.

* Almost forty years have gone by since the Treaty Against Genocide was sent to the American Senate for advice and consent. Many Senate members have since been

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The religious wars of previous centuries had all invariably been accompanied by the extermination of entire Jewish communities. The Albigenses, the Huguenots, the Hussites: from the Holy Sepulchre on, every Christian crusade against schismatics and infidels has invariably included a good number of Jews in the same blood bath. And all the main elements of the genocide *par excellence* of our century — the Holocaust — were already present, according to Leo Kuper, in those historical antecedents. "There were the laws corresponding to those instituted at Nuremberg; there were the same distinctive symbols; there was the theory of a Jewish conspiracy."

Furthermore, the extermination of Jews was based on two conditions present in many other types of genocide: the need for a scapegoat, and a social function carried out by some specific group within the community, as in the case of financial and commercial activities, which are mainly conducted by Jews in traditional, agricultural societies. There are many analogies in the case of the second condition: e.g., the persecution of the Indian communities in East Africa, as the "trading classes and the exploiters," or of the "Jews" of the Far East, the Chinese (in Java and elsewhere).

But the binomial genocide-holocaust is deeply inscribed in the dominating tendency of our century: an increasing bureaucratization of the totalitarian state, and the increasing power of the state apparatus. If, as Rubenstein states, twentieth century genocide has its foundations in the military exterminations of mass wars (starting with WWI), and in the civilian massacres of the revolution-counterrevolution cycles which shook Central Western Europe after the Russian Revolution, then, according to Arendt, the ultimate foundation of genocide is to be found in the transformation of the State from an institution of law to an instrument in the hands of the dominant national community — a transformation sanctioned by the signature of the Treaty on Minorities after WWI.

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calling for a debate, without success, for on each occasion, a group of Conservative senators has regularly succeeded in having the ratification postponed.

On February 19, 1986, the Conservative patrol, led by Senator Jesse Helms, was finally defeated. The Treaty was at last ratified by a vote of 83 to 11. This legal act may not put an end to genocide in the world, wrote *The Washington Post*, but it will give at least formal recognition to America's moral commitment.

Within the trilogy of crimes upon which the statute instituting the Military Court of Nuremberg was based — that is, crimes against peace, crimes of war and crimes against humanity — genocide was included in the third category. It is no coincidence that a new term for an ancient crime (the refusal of the right of entire groups of human beings to exist), genocide, is a neologism invented by a Polish-American, Prof. R. Lemkin, the author of a 1944 dossier entitled *Axis Rule in Occupied Europe* — an extremely detailed inventory of the systematic extermination of the Jews and of "other inferior races," both inside and outside the Third Reich.

On the occasion of the recent ratification of this Treaty, the following is a brief account of the history of the concept of genocide and of its recent "political use."

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Mass extermination, bureaucratic dehumanization, the physical and cultural genocide of national minorities, all have found their instrument in the modern Leviathan. A collective crime committed by the dominating community against another, genocide is almost always a State crime, conducted within a State.

The terrifying massacre of the Armenians by the Turks (800,000 dead), which was the first of the long series of genocides committed in this century, is a case in point. The deportation and the extermination of an entire population in the desolate expanses of the Syrian desert and of the Valley of Mesopotamia would never have been possible without the modern administrative structure of the Turkish State and its local provincial units, its civil servants, its army and its police force. Thanks to this structure, based initially on the "millet" (an administrative unit which, paradoxically, with its relative religious autonomy had preserved ethnic and cultural differences), the Armenians, the "merchant race," were exterminated with bureaucratic efficiency.

Gone were the old-fashioned massacres of Sassun and Sultan Abdul-Hamid in the 1890's, and of Adana in 1909. The first step in this bureaucratic procedure was to disarm the Armenian soldiers serving in the Turkish army at the beginning of the 1915 War. Then the whole civilian population was disarmed. After this, the elite, men of culture, public servants, professional men and businessmen, were decapitated. Any influential voice capable of representing the people was silenced. And in the terrible hush that followed, a tragedy ensued. Two-thirds of an ancient population, suspected for this reason alone of being in collusion with the advancing Russian enemy, were exterminated near the front, or loaded onto carts and taken to die in far-off regions in the interior.

Bureaucratic rationalization, new techniques and the modern state's vast system of communication (roads, railways, etc.) have amplified beyond all proportion the traditional forms of extermination: they are, remarks Toynbee, planned massacres, systematic and complete, committed in cold blood, deliberately willed by the holders of a despotic political power, and carried out with all the resources of modern technology and organization.

The mass deportation of a population suspected of having an understanding with the enemy anticipates the similar fate of the many unfortunate Ciscaucasian populations deported by Stalin in 1943-4. But as the Soviet historian Alexander Necric writes, "the deportation of millions of people would never have been possible, if the appropriate Soviet organs had not accumulated such vast experience in controlling masses of people in the concentration camps," from the wave of Korean arrests in the Far East at the beginning of the thirties, to the deportation of 80,000 Czechs to concentration camps in the north in 1939.

But even before that, back in 1929-30, "15 million farmers, and maybe

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more," as Solzhenitsyn recalls, "were driven forward into the taiga and tundra, and swallowed by the crust of ice." Then came the extermination of the Communist cadres between 1935 and 1938 the mass executions of the following year (a million people put to death): mass deportation in goods trains (two million dead in the concentration camps), mass arrests (with quotas assigned to each city, military district and unit), the hunting down and the arrest of ethnic groups (the Koreans in the Far East, but also the Estonians in Leningrad and the Latvian fusiliers). "The cruellest of all the inquisitors, Torquemada," writes Khruschev in his famous report (in which no mention is made of the ethnic genocides of the forties), "in no way equalled Stalin's record of political terror between 1936 and 1938."

From "social prophylaxis" to "regeneration:" If Stalin had by far outdone "the cruellest of all the inquisitors," in the second half of the seventies Pol-Pot and the Cambodian Communists blanched the memory of Jacobinic terror. "The city is bad. Man must know that he is born from a grain of rice." The rural communism of Pol-Pot, Ieng Sary and Khien Samphan dreamt of a society without cities, without property, without paper money. In order to achieve this, the cities were emptied of their inhabitants. In Phnom Penh, roads and buildings were submerged by the vegatation. After the "glorious April 17th" of 1975, more than 4 million Khmers were forced to begin their journey along the road leading to the ancestral forest, which included hard labor, a diet below subsistence level, strict discipline marked by a frenzy for production and the hysteria of purification. Radical collectivism and absolute total conditioning of human existence were guaranteed by dissolving family units. Boys aged just over ten were ordered to spy on the "new population" of ex-city dwellers, and to report to the impersonal big brother, the Ankar Leu, or Superior Organization. Those who did not adapt to the new order either died of deprivation or were made to disappear. The victims of the civil war of the previous military regime had been six hundred thousand; according to several estimates, the victims of "peace" were certainly more than two million, out of a population of less than eight million inhabitants.

With the advent of decolonialization, genocide, rather than being the result of totalitarian ideologies, became a factor linked to the multi-ethnic composition of the artificial states created by ex-colonial powers. The ethnic, religious and racial fragmentation of the new States frequently led to conflicts which then in turn led to genocides or extensive massacres. Furthermore, internal crises frequently were amplified by the interference of foreign powers who projected their own conflicts to the Third World. This occurred not only in the case of East-West conflicts, but also in conflicts within the same sphere, as for example in Indochina where the tension between China and Russia extended and multiplied the internal crises of countries such as Vietnam, Laos, Cambodia, etc.

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India provided the most dramatic example of a pluralist conflict coinciding exactly with the beginning of decolonialization. According to Kuper, there is an "intimate relationship" between genocide and ex-colonial pluralist societies. In their biography of Gandhi, Collins and Lapierre describe how in Amritsar "homicide in the bazaars was just as frequent as public defecation in the streets." The Hindus of the cities wandered apparently aimlessly around the streets only to throw a phial of nitric or sulphuric acid in the face of unsuspectimg Muslims who happened to cross their path. Fire bugs were at work in every street. There was a total division between the two religious communities: the Hindus, 300 million strong, and the Muslims, with 100 million. The caste rules of the dominating community prevented any interchange.

The violence intensified even as the division of India into a Muslim West and a Hindu East occurred. In the countryside, the Sikh refugees, squashed into trains for the East, were attacked and massacred by bands of Muslims from Pakistan, and the Muslims heading for the West were butchered by the Hindus and Sikhs in India. Only thirty-six hours before the Statement of lndependence on August 13, 1947, Calcutta, a city where people were killed for a handful of rice, could have become the scene of a huge massacre. The greatest concentration of human beings on earth, with its 400 thousand beggars and 40 thousand lepers, was saved by the charisma of one man, Gandhi. On the day of independence, half a million Hindus and Muslims gathered to pray with him, while in Punjab the conflict between the two communities led to a genocide in which, according to varying estimates, from 200 thousand to approximately half a million, were killed.

The division of Pakistan itself was another tragedy of biblical proportions. Muslim brotherhood and the common hatred for Hindus were not sufficient to unite an ethnically divided country with strong economic differences between East and West, and little communication between the two. A hard working Bengalese East saw an ever increasing segment of its product destined for the almost exclusive industrialization of the West, and a 60% difference in the per capita income in favor of Pakistan.

In order to uproot the Bengalese resistance, the Karachi government resorted to massacres and terror, instituting centers of torture and extermination. Three million Bengalese died in the war which finally resulted in the creation of two separate countries, Pakistan and Bangladesh. According to UN estimates, one and a half million houses were destroyed in the process, and ten million refugees were left to die along the road to India, thus completing the picture of what was probably the bloodiest conflict since WW II.

With the expiration of the mandates of the colonial powers, ancient dominating races often used extermination to impose their absolute control over subalternate races, instigating a transition from external colonialism to internal colonialism. Many of the genocides committed over the last thirty years in the Third World are inscribed in this shift from one form of coloni-

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alism to another. This provides the harshest critique of the "sacred nature" attributed to Third World liberation movements. For many years a generation of Third World altar boys had placed their eschatological hope of universal redemption in the colonized countries. It was not enough that the anti-colonial liberation movements should be strategically victorious; they had also to be 'philosophically definitive.' From the population of the abysses there had to emerge a superior human quality, even though there is no providential design which guarantees that "a population which frees itself from slavery should automatically earn itself an entry ticket to humanity," as opposed to gang warfare. And no idea of justice is intrinsic in the overturning of a simple relation of force.

Still, there does not seem to be a single motivation for genocide, especially if one rejects Sartre's equation that colonialism equals genocide, or the Soviet concept of the term which limits genocide to the Nazi-Fascist exterminations. What seems common to all forms of genocide, on the other hand, is an apolitical and aconceptual element: it is an unspeakable phenomenon, an experience almost impossible to render in normal speech. Every genocide is not only massive in proportion but is also accompanied by endless horror. What makes genocide possible is the total degradation of its victims: the refusal of the right to exist is preceded by the refusal to recognize human qualities in those who are to be suppressed. Thus, according to Kuper, almost invariably, gratuitous, atrocious torture, carried out with "gay and joyful abandon," precedes the actual massacre. Sexual violence and mutilations are the "norm." In India, on the eve of the division, rival bands of Hindus and Muslims quenched their thirst for blood by willfully hunting down the weak and defenseless in the trains bearing refugees, and among patients confined to hospital beds.

In the atmosphere of permanent massacre in Lebanon, people who were above suspicion, according to the testimony of Dejardins, abandoned themselves to the most abject practices. "Priests and devout Muslims practised torture in the same degree. Prisoners were castrated by young girls belonging to the best Christian society, to the petite bourgeoisie, wearing clothes designed by Pierre Cardin or Courreges, fans of Brassens and Bob Dylan. University professors, champions of the coexistence between communities, the embodiment of the wiseness of Islam and Christianity together, tore out the eyes and bowels of women."

Lebanon, this tragicomic pantomime of all tensions and conflicts in the Middle East, is the epitome of economic, religious, political, ideological, and ethnic antagonisms within pluralist Third World societies. And to these different antagonisms the interests of regional powers are superimposed, along with international East-West tensions.

Seventy thousand people have been slaughtered in Lebanon since the start of the civil war in 1975. And yet immense tragedies such as this one and previous ones in Bangladesh in 1971, have occurred amid the relative

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indifference or impotence of the United Nations. Antidotes to genocide, such as the presence of an efficient peace force (as in Ireland), or the exertion of constant international pressure (as against South Africa) prove either impossible to apply to or just ineffectual. And even though an International Convention for the Repression of Genocide was approved in 1948, all too often this crime remains unpunished because there is no court qualified to conduct the preliminary proceedings and pass the appropriate sentences against the authors of these crimes.

Often genocide, as a state crime, is not even prosecuted by the courts of the very states in which it was committed. And the courts of foreign states cannot take the place of the reluctant magistrates of the countries responsible for the massacres. In this case, the principle of protection from foreign interference is valid, even though this is a principle which is often abused.

When, in 1915, European powers publicly deplored the Armenian massacre, their motives were not purely humanitarian. The noble words barely disguised the greed and predatory instincts of those whose aim was to dismember the Turkish Empire. Yet, still no steps have been taken to try to find an alternative, to draw up some kind of international criminal jurisdiction. The recommendation contained in the 1948 Convention has never been followed up. There is still no international criminal court.

On January 1, 1970, only 74 of the approximately 140 states in the world ratified the 1948 Convention against Genocide. Great Britain and Communist China were not among the 74 ratifying states. By the next ratification, on December 31, 1978, this figure had gone up to only 84.

International law is clearly inadequate both in point of fact and doctrine. The "protection" envisaged by international law on genocide includes neither political nor cultural genocide. It refers only to national, ethnic, racial and religious groups. This is a somewhat paradoxical situation in view of the fact that in this century religious ideas as a cause of genocide have been supplanted by political ideologies. The most zealous country in refusing the extension of the crime of genocide to political massacres during the preliminary debate which preceded the approval of the 1948 Convention was in fact the Soviet Union.

In spite of some steps forward, such as the adoption in November 1968 by the United Nations General Assembly of the principle of indefensibility of War crimes and of crimes against humanity, including also the crime of genocide, international legislation still fails to act as a deterrent. "The principles upon which the Convention (against genocide) is based, are principles recognized by civilized nations as binding, even outside the conventional agreement" stated the International Court of Justice in its consultative opinion of May 28, 1951 on the "Reservations to the Convention of 1948 for the Prevention and the Repression of Genocide."

Principles are one thing, but a system of international criminal law, which would really put the court in a position to prosecute those responsible, as in

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Nuremberg, is quite another. Stanley Hoffmann observes that states are the last collective entities which refuse any higher authority, and claim the exclusive right to carry out justice.

But what happens when the States are guilty? Individuals, families, feudal lords have all bowed down before a superior authority. But a "moral for the cold monsters" has not yet been sanctioned by any law and there is often a bitter price to pay for a principle, that of state sovereignty, which is indisputable but which also entails the States' internal impunity and external arrogance.

In Search of Columbo

Jerry Zaslove

In a recent exchange on the subject of *Columbo*,[1] Agnes Heller and Moishe Gonzales pitched their tents within the landscape of popular culture which was already littered with the remnants of various academic approaches to the culture industry. Neither, however, went far enough in defetishizing this icon of popular culture and, as a consequence, do not penetrate its sinister qualities. Heller in particular attempts to write a contemporary theory of history based on *Columbo*, but her hope of raising a counterfeit product of the culture industry to utopian heights is doomed to failure. The secret of Columbo lies in the fact that he has been plagiarized from an older, more authentic cultural critique: Dostoevsky's *Crime and Punishment*, in the confrontation between Raskolnikov and Porfiry Porfirovich. In obscuring this legacy of cultural criticism, she has permitted the culture industry's programmers to assimilate the public's frustration against an administered system of consumption. The result of this type of cultural criticism is to further internalize the schizoid nature of the state's romance with alienated outsiders.

By seeing in Columbo an "angel of justice" who "captures the spirit of our contemporary historical consciousness" and the embodiment of "dominant theories of history," Heller confuses the issue and abandons the more important role of the cultural critic: to demonstrate how the culture industry functions as purveyor of an ideology of passivity. The culture industry

1. See Agnes Heller, "The Secrets of Columbo," and Moishe Gonzales, "The Secrets of Heller," in *Telos* 66 (Winter 1985-86).

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creates popular memory out of repetition, stereotyping, and even counterfeiting genuine or critical culture. An overtly parasitic crime-stopper such as Columbo is memorable because of his capacity to make mass culture appear profound and universal and provide individuals with a "civic" aura of responsibility. As American cops and detectives have always done, he exposes the life of the criminal to the scrutiny of the public and the state. The genre therefore ignores how the individual and the state, the private and public spheres, have collapsed into a single dimension, and it consequently discloses nothing, changes nothing and hardly subverts reality by drawing attention to its ideological forms.

Columbo inherits the legacy of an internalized passivity of a culture which has fully assimilated the bourgeois models of reason. This is precisely what was parodied by Dostoevsky in the character of the examining magistrate, detective-psychologist and State Priest Porfirovich in *Crime and Punishment*. Dostoevsky's novel exposes the morally cheesy policeman, good cop and bad cop at the same time, who has "feelings" as well as conscience, intellectual curiosity as well as worm-like social graces, and who relishes insinuating himself into the theories and utopian ideals of the self-ravaged, anarcho-mystical Narodniki. *Crime and Punishment* is prophetic of Columbo and the sado-masochistic forms of the modern state that concoct anti-bureaucratic personality types who disguise their lack of individual resistance behind a rat-race cynicism.

Columbo also characterizes the "attitude of speechless obedience in all,"[2] which Adorno locates in Wagner's figures. Columbo may not be Lohengrin, but the ugly duckling detective glows with a Wagnerian aura in collusion with the deep conformism of mass culture. In this sense, Columbo is one of the world's worst kept secrets. Forgiving and whitewashing his significance and falseness, as Heller does, is a full-time job of the culture industry, and should at least be avoided by responsible philosophers.

Horkheimer and Adorno are closer to the mark, and closer to Dostoevsky as well, with their criticism of Odysseus in *Dialectic of Enlightenment*. For them, cultural criticism searches for the historical mimesis that illuminates the commodifying and centralizing forces of the "imaginary." Odysseus, like Porfirovich, is the archetypically reactionary urBabbit who displays how his reasoning powers must submit to the mythological forces of deception and docility. This renunciation of rationality came to the fore during the New Deal's brief interlude with progressivism, which produced the largely mythical hero of reform, redemption and self-sacrifice for the cause of the Nation: the gangster turned crime-stopper in American cultural memory, who is as fictional and self-created as America itself is invented and detached from history. These figures, like the F.D.R.-esque James Cagney

2. T.W. Adorno, *In Search of Wagner* (London, New Left Books: 1981). 35.

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turned F.B.I. crusader in G. Man films, eventually metamorphize into the introverted proletarian "intellectuals:" Bogart's self-sufficient American tough guys who exemplify the welfare state gone sour. The conundrum of the culture industry is to produce images of tricksters who can manipulate our passivity by flaunting their own failures, while suggesting our complicity with them. The secrets of Columbo lie in his ability to reveal the many aspects of our asocial existence. He becomes a salesman of pure being — that is, the spirit of stupidity bearing out the observation that "The cunning of the clever man who assumes the form of stupidity turns to stupidity as soon as he surrenders that form."[3]

Columbo is the asocial shell of the socialized, post-war individual whose interior has been assimilated into American values and types of "manliness" formed in the crucible of the welfare state's national ideology. The ideological breadwinner-fugitive of F.D.R.'s national nostalgia, Columbo represents the 'thirties' ethnic narcissism and immigrant culture. He appeals to social monads, the inert bourgeois masks of "types" and physiognomy in the manner of Balzac and Dostoevsky, but without the novelistic aethestic radicalism. The social detective is high class. He orchestrates the show, solo; he conducts and arranges the mood; he slaves as an aesthete and technocrat within the work-ethic, and he guides our passive viewing habits in the way the system itself guides us: by revealing its "secrets" piecemeal, by depriving us of a vantage point that would give us a picture of the culture industry and its role within the high capitalist state that flaunts its wealth and power by claiming to have no secrets at all.

Columbo appears as the uprooted, psuedo-bohemian intellectual whose omnicompetent skills rest in his ability to convey the difference between his "personality" and the rest of the mob. This technique is identical to the fascist agitator's apparent ability to extract from the mob enough identification that most ideational content — usually trivialized as social issues — can be eliminated.[4] The ideology of strength and weakness cultivates fears of not knowing the "inner" world, the secret world of knowledge, which turns into a hostility toward rational thought and introspection itself. Columbo seems to be pretending to be stupid, but he *is* really dumb. His egalitarianism amounts to a mock protest against misery, but not the misery of the poor. Columbo's misery, or America's, is his inability to win the war on crime, while living within the dictatorial drives of the state-we-never-see. As interrogator who never gets the final answer, he succeeds only by turning weakness into strength: Columbo tries to be the folk-hero who attacks gi-

3. Max Horkheimer and T.W. Adorno, *Dialectic of Enlightment* (London, Allen Lane: 1973), 68.

4. T.W. Adorno, "Freudian Theory and the Pattern of Fascist Propaganda," in *The Frankfurt School Reader,* ed. Andrew Arato and Eike Gebhardt (New York, The Continuum Publishing Company: 1982).

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ants and fatalistically disappears into the national mists. But when he resorts to surprise investigations, harassment and invasions of privacy, he blows his cover and becomes omnipresent. In the end, the cathartic self-surrender of the victim takes place under the sign of entertainment, for a national audience that adulates the secret police.

Historically the aura of the Kennedy family reformism has soaked into the personality and iconic quality of Peter Falk. He exposes the decadent — the art dealers, the writers, actors and self-important frauds. Here is the American attack against false happiness, illusory success, celebrity status, and against those who are not The Real Thing. The good cop finds the fakes and roots them out. Yet Columbo has not only been replaced by "Dallas" and "Dynasty," as Gonzales notes, he has metamorphized into the social worker cop in "Hill Street Blues," where American values are modernized in naturalistic tones, glossing over the exportable potential of urban blight. The culture industry continues to entangle the welfare state in law-enforcement crusades. During the 1930s, the welfare state's war on poverty was mythologically connected to Roosevelt's war on crime led by the arch-warrior J. Edgar Hoover. The campaign to stamp out crime was part of the redemptive ideology and, subsequently, the war preparedness rhetoric of social renewal.[5] The culture industry, in particular the relationship of Hollywood, yellow journalism, the Luce syndicate and the triumphalist electioneering campaigns of 1936 and 1940, enabled the alienated cop-investigator, in the guise of a plebian hero, to emerge as a defender of the system's righteousness, and simultaneously the depoliticized image of the individual battling the system. Columbo inherits this legacy, and his mythological aura is rooted as much in Frank Capra's Americanism and the fights against corruption as it is in the longing of American progressivism for the professionalism and "know-how" that will cover up the amateurism of its civil society. Columbo, however, does not fight for justice; he has no values. He only defends his image as a politician who is protecting his place in the American sun, despite the alienation of the modern man's existential role.

The character of the liberal cop hero refuses complicity in the bourgeois dilemma that crime really does pay, by disclaiming any connection to law enforcement. The association of crime-fighting and national myth-making arouses the adolescent-minded, but it also mobilizes public opinion in the continuing cold war against other myths: the myth of the public enemy, the myth of the international left, and finally the myth of dirty wealth, that only wealth in the wrong hands is evil. Columbo expresses an anti-modern, anti-capitalism that emerges from the everyday life of the people's state (out there somewhere, imageless and benign) to become an agent of the extragovernmental independent spirit that wages war on practically every-

5. See Richard Gid Powers, *G. Men: Hoover's FBI in American Popular Culture* (Carbondale and Edwardsville, Southern Illinois University Press,: 1983).

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thing. He is a shabby utopian philosopher of escapades into universal reification who fully enjoys his work in attacking leisure-class criminals, cranks, hysterics, missionaries, movie stars and those who are, to cite Dostoevsky, afflicted by "bookish dreams, with a heart exacerbated by theories." But Dostoevsky was describing Porfirovich gloating over the weakening Raskolnikov, and hoping that Raskolnikov will understand why the agent of the state hopes that the new courts will convince the common people not to fear the words "found guilty."

Columbo is the conscious creation of writers familiar with the character and personality of Porfirovich.[6] They did not know that this neurotic detective was the Czar's last hope to combat street revolutionaries, inner exiles, declassed intellectuals, cummunards, and teachers. To get to the marginal types was one problem, but to get them to commit intellectual suicide in the positivist arms of instrumental reason, in short to embrace philosophy as popularized and purified by the professional policemen of the mind, was another. This would be the ultimate objective of universal literacy, expanding colonialism, and the creation of the culture industry which would ensure that the transition from the formative, egalitarian ideals of democratic society emancipated from feudalism and serfdom would take place smoothly and formally, if necessary over the heads of the "masses." In the war against external enemies, the guilt of the individual supercedes the ideals of social responsibility. The new war on crime is waged by investigative agencies that snoop into banking, tax evaders, drugs, monopolies, trusts and gangland combines: the legacy of reformist America passes from Columbo to Nader now that J. Edgar Hoover is a thoroughly discredited being.

According to Heller the show expresses a philosophy of otherness, rather than a social pathology. The passivity of being is expressed in the pseudo-strength of the hero against the reflexive weakening forms of existence that give him his identity. The long tradition of parody, comic grotesque, *Bildungsliteratur*, and parable that reminds us of the ways the people have been eliminated from "folk" traditions is a bitter memory in the history of adversary criminal romances and trickster traditions now assimilated into the conformist traditions of the culture industry. Brecht's *The Irresistible Rise of Arturo Ui* reminds us of this connection as well as the collapse of the idea of the "popular" tradition into the lowest common denominator of bourgeois culture.

Yet mass culture can be post-modernist too; it can provide us with ironic, playful constructs of the self and nothingness. Thomas Mann's story *Mario and the Magician* reveals the fatal attraction of liberal intellectuals for Columbo's admirers, for the charismatic, ambiguously powerful crowd

6. Reported in "Weekend," February 10, 1978.

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pleasers who can always be interpreted but are never really seen. In the domain of the novel, such characterizations exhibit the free play of the mind released from the unfreedom of the reality principle; this is genuine cultural criticism. In the hands of cultural hacks, the results can only ornament culture with the illusion of subcultural entertainment that enhances the domain of the present. "Columbo" seems to suggest that all great American loners are in reality, unfairly ostracized from power. At the sociocultural level, the memorable feelings that remain cannot simply be explained by a struggle for power between hunter and quarry, as Heller would have it. This rank and file detective uses guile and cunning to trap his banal victims, but he also establishes a bond between himself and them: crime-stopping as social-climbing. Obsequious parvenu of the system, Columbo makes us feel grateful for his narrating a tale of violence from the civilized point of view of a thoroughly minor character. The seedy, pathetic little man reminds us of the hidden divinity of the devalued individual, and as a bit player he celebrates the atomization of welfare state ideology into beggarly pathos. Columbo pretends to be an outsider in order to hold onto the inside track. He attacks the high and mighty in the spirit of radical reformism: to keep the system running smoothly.

There are several dangers in doing cultural criticism as though the language of the self and the language of identity/non-identity did not refer to specific conditions or cannot refer to genuine mediations that have already *aesthetically* solved the "secret" of Columbo. Doestevsky and Brecht prefigured the secret in their lucid warning of the mass mind at work, which is all that can be derived from Heller's conclusion that "The authors of Columbo manufactured a character everyone can identify with. This is Columbo's major secret." Adorno solved this secret code when he described the charismatic and tormented Hitlerian leader as a composite of King Kong and the suburban barber who "must work the miracle of appearing as an average person." Heller's apologetics for mass culture mix popular culture with the insights of high intellectual culture. The danger here is that this cultural analysis leads to the deadends of postmodern criticism, where the material being analyzed assumes the status of autonomous art when in fact it mirrors only the kitsch instincts and reality of the falsely "organic" culture industry. This misreading of contemprorary history is also a misreading of the American state, which has developed deep inner connections between hedonistic longings and the culture of consumption. These are the adversary conditions to Heller's love of justice and equality and are suppressed by an analysis which emphasized "our" love of Columbo's irony, incognito, character analsis and other such pre-manipulated pleasures. To dignify Columbo is to dignify the process that glorifies the American Misère.

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Laudatio *for Leo Lowenthal*

Eberhard Lämmert*

In the 1920s, Leo Lowenthal mustered the courage and the nonchalance to point literary studies in a direction which, had the discipline in Germany at that time taken heed, would have spared it a great deal of repetition forty years later. In looking at his career, we must consider how these early efforts were subject to a consolidation and historical elaboration through Lowenthal's involvement with the Institute of Social Research in Frankfurt and then in New York. We ought to consider that there is today a need for a social historian who understands that literature contains the history of bourgeois society — including all of its sufferings, shortcomings and hopes — better than the traditional sources of political history. Such a social historian would guide us through the new attempts to come to terms with the present situation. Today in Germany the younger generation in the humanities is threatened not just by unemployment. Even when employment is available, the contemporary collapse of utopian thought nourishes the danger of a perfectly operating aimlessness in artistic as well as scientific endeavor. This situation calls for a mentor, who, throughout his life and in very dissimilar eras, had maintained in his scholarly work the productive tension between artistic understanding and social ethics.

Lowenthal wrote his dissertation on a theologian who dared to declare lightning to be the father of light. As an unusually dynamic religious thinker, Franz von Baader presented to his readers a concept of a "civil society" permeated by God's love — this some fifty years after Rousseau. The energy released as a result of his work on this religious thinker (who was, by the way, ardently counterrevolutionary), moved the 23 year old, at the peak of the inflationary crisis, to social activism: relief work for Jewish refugees from Eastern Europe, involvement in Zionist circles, cofounding of a Jewish weekly, public lectures on literature, and intensive advisory work for the Frankfurt People's Theater (*Frankfurter Volksbuhne*), and all of this in addition to his regular duties as an instructor at a Prussian high school.

Thus equipped with a broad spectrum of social experiences from the *bel étage* as well as from more remote corners of cultural life, Lowenthal joined the Institute of Social Research as a freelance researcher in 1926. There he

*This piece is adapted from an address given at the Free University in May 1986, when Lowenthal received an honorary doctorate. A transcript of the address was first published in the *Frankfurter Rundschau* on July 1, 1986. All footnotes have been provided by the translator. Translated by David J. Levin.

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found himself within a circle of Frankfurt school friends, none of whom knew then that they would create a "Frankfurt School."

From the start, its members were required to work synoptically: as a result, psychological as well as national-economic or aesthetic studies came to share a social-scientific profile. This profile clearly clashed both with the systematic nature of contemporary sociology and with the dominant paradigms in the humanities. The self-proclaimed and often challenged objective of the Institute was to empirically confirm a critical theory of bourgeois society. With an unusual combination of empiricism and theory, the young Lowenthal challenged contemporary literary criticism to a duel, when he assumed the management of the newly created *Zeitschrift für Sozialforschung* in 1932.

With the first double issue, the journal introduced the themes in which the Institute tested its conception of social theory. It soon became clear that the emphasis was going to be on the analysis of bourgeois individuality and the critique of mass culture. Adorno wrote on the social situation of music, Pollock on economic planning, Fromm on psychoanalysis and social psychology, Horkheimer offered a last-minute introduction to the whole enterprise, and Lowenthal, who organized the all-important review section, wrote on the social situation of literary studies.

He began with one of the most important collections of the beginning of the decade, *Philosophie der Literaturewissenschaft*, a volume edited by Emil Ermatinger and published in 1930. Here Lowenthal discovered a form of scholarship which employed terms such as "work" and "*Gestalt*," and even "classicism" and "romanticism," as metaphysical constants from which historical specificity had long since been extracted. Further, he saw an irreducible veneration of the creative individual going hand in hand with an ostentatious contempt for concrete historical circumstances. The lofty tone sustained throughout the volume did not distract the young critic from the conviction that such scholarship could no longer serve as a bullwark against a relentless hostility toward civilization. For example, one sentence written by Herbert Cysarz and closely analyzed by Lowenthal proclaims: "In literary history, deeds and those who perpetrate them are givens, whereas in world history one finds only more or less falsified accounts of the mostly shady business affairs of seldom personifiable forms."

Indeed, thirty years later, Barthes complained that literary history had hardly advanced from the era of king's chronicles to actual historiography. But here, around 1930, the self-annointed trustees of German literary history completely turned their writer-heroes into supra-historical subjects and thus turned their backs on contemporary history itself. Not surprisingly, quite a few of the contributors to this collection were to be found a few years later speaking at bonfires where, for the time being, only "un-German" books were burned.

At that time Lowenthal did not offer an unmediated social theory which would dislodge what he recognized as a "closed, irrationalist front of literary

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studies," instead he first resorted to the serious trustworthy tradition of literary-historical methodology. He recalled the far stricter rules of Dilthey's hermeneutics and then pointed out the individual contributors' "homemade psychology" and "skewed relation" to history and sociological research, "'the arbitrariness in their choice of categories, the artificial isolation and scholarly alienation of their object."

In the midst of such a confrontation with the leading experts of the field, Lowenthal proposed the outline of a materialist analysis of motives and forms. According to this analysis, literature should be the interpreter of contemporary social life — including economic structures as well as private attitudes, ideas, and desires. As far as Lowenthal was concerned, Balzac, Zola, the *Jungdeutschen* and the writers of late 19th century narrative testify to the value of such a mode of inquiry.

Thus, Lowenthal sketched the outline of a social history of writers since their emancipation from the position of scribes to free-lance writers, and additionally described as a future task "the study of the effect of literary works." Two years later, in 1934, Lowenthal suggested the need for a theory of literary reception (one which has developed in Germany only in the mid-1960s) through a concrete example.[1]

Lowenthal wrote that essay in Geneva and by then the journal was being printed in Paris. Guided by the same vision that had allowed him two years earlier to proposed a timely form of literary studies, he and his colleagues from the Institute had been engaged since 1930 in the task of surveying the submission to authority among blue- and white-collar workers in the Rheinland and Westphalia. This questionnaire allowed for a critical ideological analysis and evaluation of the responses. The results of this survey led the Institute's members to emigrate to other European countries. In 1934, Columbia University in New York offered Lowenthal the opportunity to continue his work for the Institute.

All too rarely has the prognostic validity of perceptions been subject to verification outside of the natural sciences, as it was in the following instance. Of all his friends involved in the Institute, it was the literary historian Lowenthal who three years later played the trump card of socio-political analysis with his essay on Knut Hamsun.[2] On the basis of an immanent "analysis of his characters and the principles of his literary construction," but most importantly citing Hamsun's use of natural motifs, Lowenthal forecast Hamsun's suscepti-

1. See: "Die Auffassung Dostojewskis im Vorkriegsdeutschland." *Zeitschrift für Soziallforschung* 3 (1934); in English, "The Reception of Dostoevsky in Pre-World I Germany," in: Lowenthal, *Communication in Society*, vol. 1: *Literature and Mass Culture*. (Transaction Books, 1983).

2. This essay originally appeared as: "Knut Hamsun. Zur Vorgeschichte der autoritären Ideologie." *Zeitschrift für Soziallforschung* 6 (1937): 295-345; in English under the title "Knut Hamsun. 1860-1972," in *Communication in Society* vol. 2: *Literature and the Image of Man*, (Transaction Books, 1986).

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bility to fascism which three years later did in fact happen during the occupation of Norway. But at the time even Marcuse and Benjamin remained skeptical about the diagnostic power of this kind of critical ideological analysis of texts.

The damage sustained by two or three generations of scholars and by Germans in general became painfully clear, in the light of the exertion with which, thirty years later, a generation of younger literary scholars sought to include the reader, develop a methodological critique of ideology, and a sociohistorical orientation in literary research; in light of the displeasure this generated among postwar Germany scholars; in light of the gap separating Lowenthal's vision in the thirties of literary studies versus the overall state of this discipline as late as the mid-1960s. Perhaps this damage lasts even longer for those who deny its existence than it does for those like Lowenthal, who were directly affected, and who, as early as 1933, experienced first-hand the enduring division of the Germans through National Socialism.

It is possible to relate Lowenthal's studies of 19th century literature[3] to his witnessing of the experiences of submission to authority and to an antisemitism which was ultimately orgainzed by the state. These experiences remained formative for his theoretical definition of a mass culture that manipulates its consumers not only through propaganda, but even more through advertising and light entertainment. During his years of work at the Institute in New York (for a while, as director of research at the Voice of America) and, ultimately as an untiringly engaged professor of sociology at Berkeley, his studies extended beyond the European horizon into the American way of life — much farther than his friends Horkheimer and Adorno.

His early social research also made it easier for Lowenthal to pursue broader-based studies on antisemitism and on the authoritarian content of bestseller literature — especially biographies.[4] Lowenthal turned his experience in various disciplinary perspectives within the Institute into an empiricism that, in contrast to the merely statistical work, never lost sight of ideological critique when analyzing a survey. Instead of the questionable leveling of interview texts into statistical groups, he subjected the interviews to qualitative analyses, and in the process, put together comparative rankings that emphasized the crassest degree of delusions. Even today, this qualitative analysis supplies much more than the mere presentation of schematized "attitudes" as they have become common in the course of "Content Analyis."

3. In "The Decline of the Bourgeoisie" Lowenthal discussed the German bourgeois inability to bring about a revolution. See "Studies on the German Novel in the Nineteenth Century," in *Communication in Society* vol. 2, *Literature and the Image of Man*, pt. II. (Transaction Books, 1986).

4. See Lowenthal, "The Triumph of Mass Idols," *Communication in Society*, vol. 1: *Literature and Mass Culture* (Transaction Books, 1983). First version published as "Biographies in Popular Magazines," in *Radio Research 1942-1943*, Paul P. Lazarsfeld and Frank Stanton, eds. (New York: Duell Sloan and Pearce, 1944).

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With reference to stylistic oddities, such as the recurrence in biographical literature of empty claims to uniqueness, Lowenthal discovered far-reaching parallels between the paradigms of writing and market-oriented entertainment of literature and advertising: "The most vivacious girl corresponds to the best toothpaste; the highest endurance in sportsmanship corresponds to the most efficient vitamins; the unique performance of the politician corresponds to the unsurpassed efficiency of the automobile. There is a pre-established harmony between the objects of mass production in the advertising columns and the objects of biography in the editorial comment. The language of promotion has replaced the language of evaluation. Only the price tag is missing."[5] And then the conclusion: "What on first sight seems to be the rather harmless atmosphere of entertainment and consumption is, on closer examination, revealed as a reign of psychic terror, where the masses have to realize the pettiness and insignificance of their everyday life ... Advertisement and terror ... form their unity in the world of superlatives."[6]

Analyses of this kind made Lowenthal mistrustful of every type of technical reproduction of art. Although he did not go so far as Horkheimer and Adorno, who even rejected radio because it was to fascism what the printing press was for the Reformation. Much later, though, Lowenthal relented in this categorical opposition to art and mass culture.

It is startling that in the numerous maxims on the culture industry and even in Lowenthal's writings, one cannot find a single insight into the question: what if there were no mass culture? Would the Reformation have been possible if the printing press had not existed? Or, in case one finds the Reformation an unfortunate event, given the extensive reduction in familial and public festivities, how many old or sick or imprisoned people would have less access today than ever before to forms of cultural expression, if it were not for audiovisual techniques? But if they were all exposed to nothing but great art, would not great art ultimately be more useful for manipulating the masses than yesterday's street ballad or a counterculture street theater piece today?

And yet, Lowenthal's oppostions to artwork and mass culture can be justified. As Lowenthal himself put it: "Art embodies the tension of the socially unredeemed; art is in fact the great reservoir of the formulated protest against social misfortune, which allows the glimmer of the chance of social good fortune to shimmer though. (...) Indeed, I really do think that Walter Benjamin's thesis, that history is always written by the victors, is revoked in works of art. In the work of art, what is articulated is the voice of the losers in the trials of the historical world, who will hopefully at one time be the winners."

This account lays bare the inseparable connection between artistic understanding and social ethics that Lowenthal, even more than his friends, im-

5. Lowenthal, "Triumph," *op. cit.*, p. 223.
6. Lowenthal, "Triumph," *op. cit.*, p. 224.

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parted to Critical Theory. This mediation made it possible for him to interpret the status of free-lance artists as outsiders even in the glamor of success — as a precondition for the cognitive charactaer of their works.

The experiences between 1926 and 1933 play an unmistakable role precisely in this insight. "The greater a work, the deeper it is embedded in the concrete historical situation," Horkheimer once wrote in a letter on Freud, and this is certainly no less applicable to scholarly writings than to literary ones. Thus, one must consider the shared conception of mass culture developed by the Institute in the light of each member's experience as an outsider in a time of the decline of the labor movement just prior to the National Socialist seizure of power. One must also consider antisemitism, which at that time was becoming increasingly vocal, as well as the misuse of the new radio technology for propaganda purposes, in order to explain the deeply pessimistic prognosis contained in the concept of "mass culture," which later developed into the equally pejorative concept of the "culture industry."

Lowenthal's theory of marginal figures as the basis for a diagnosis of society implies the recognition of the movements of marginal groups with autonomous artistic practices among the masses themselves. These practices ultimately point out the seering contradictions of contemporary society more clearly and provocatively than an intellectual literature helplessly longing for myths or a philistine architecture of false facades. Marginal groups bring elements into mass culture which contradict their reification by a normative "culture industry." So, too, must Critical Theory be ready today to apply, on a case by case basis, its principle of merciless historicization to its own terms as well, in order to continue to live up to its name. Lowenthal's empirical sociology of literature is possibly more apt for such an extension than the more speculative modes of thought of a more formal dialectics.

I have offered two arguments in praise of Lowenthal's lifework. First of all, there is the decades-long head start he has in the development of a timely and critical form of literary scholarship. Secondly, his research is persistently grounded in certain maxims whose historical importance has become clear after half a century, even if today we are confronted with phenomena that force us to rethink these maxims.

In a lecture entitled "Sociology of Literature in Retrospect" that Lowenthal delivered at the Free University six years ago, he made two statements about Don Quixote (one of his favorite figures in European literature), that seem to contradict one another. "Don Quixote is the symbol of the critique of bourgeois society, from its late feudal forms around 1600 to the totally manipulated conformity of the present." Indeed, Lowenthal himself has outlined the temporal parameters of his works on European literature and on modern mass culture from the 16th century to the present, and a critique of bourgeois society has been his credo at least since his joining of the Institute of Social Research some sixty years ago. In the same lecture, he told his audience that "literature in the only reliable source for people's consciousness and self-con-

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sciousness, their relation to the world as experience." If this is on target, then his interpretation of Don Quixote discloses a portion of his own self-understanding, and it is with some astonishment that we encounter Don Quixote's perception of the world in the second statement: "He (Don Quixote) is the fulfillment of the potential of the individual, he puts his critical idealism into practice." Is the social scientist who used a materialist theory of literature to uncover the hollow idealism of university *Germanistik* around 1930, is the social theorist who, on the basis of concentration-camp reports, could explain the gradual disintegration of the individual as a precondition for the total annihilation of human beings, a critical idealist?

In any case, what speaks in favor of this statement is the fact that from the very beginning, Lowenthal has avoided every self-serving form of scientific legitimation, everything in the standard scientific enterprise which he considered as merely bourgeois. And yet, if the individual's fulfillment lies in a praxis characterized by critical idealism, one discovers an eminently bourgeois display of enlightenment in the statement about Don Quixote. In this context, "critical" means that this practitioner takes up the cause of the world, but at the same time himself submits to no idea proffered from the outside world. He wants to be who he is.

For at least half of his life as a scholar, Lowenthal worked in a group in which there was lively exchange in addition to strict rules concerning how tasks were assigned. Yet, his work has become unmistakable not simply by virtue of its subject matter, but also by virtue of a firmly held position, which never yielded to fashion, but only to better insights. A typical example is the abrupt about-face which the young Zionist took when he believed he discovered that "the settlement policy of the Jewish organizations in Palestine ... involved an alliance of Arabic big landowners and Jewish money at the cost of the Arabic workers and migrant farm hands." Unmoved, he wrote in the Jewish weekly newspaper he co-edited that Zionism was carrying out a "policy of European colonialism against the Arabs." And equally unmoved, he could dismiss the furious dissemination of Critical Theory — which included his own work — among hard-core groupies of the '68 generation with the statement: "It has become an industry, a culture industry ..." And whoever still remembers, from "Sociology of Literature in Retrospect" that "culture industry" signals trends "that, in the world of late-capitalism, unequivocally surge towards a bad collective," understands, tongue-in-cheek, the warning about uncritically appropriating the theories of one's older teachers.

Lowenthal's scholarly work demonstrates a sense of responsibility for the society that allows him the freedom of his intellectual work. He has well-founded explanations for why he has chosen literature as his field of inquiry. It should be clear by now that these explanations are not limited to literature alone, but concern the totality of what happens to people in and through literature.

I remember a professor who all his life was crazy about books, and would

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collect anything that was even remotely literary and cram it anywhere in his house, including the attic. He once said that "the value of a given science is proportionate to the extent to which it can serve as an auxiliary science for others." For Lowenthal, the sociology of literature is a medium to help his students and his readers to understand — a bit better than they did before — their historical situation and their social reality.

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David Reimers, *Still the Golden Door: The Third World Comes to America,* Columbia University Press, (New York: 1985).
Tathan Glazer, ed., *The Glamor at the Gate: The New American Immigration,* Institute for Contemporary Studies Press, (San Francisco: 1985).
Richard Lamm and Gary Imhoff, *The Immigration Time Bomb,* E.P. Dutton (New York: 1985).

If race is, as it is often said, the "American Dilemma," then immigration is surely the American ambivalence. As this review is being written, the city where I live (New York) has recently celebrated the centennial of the premier symbol of the nation's immigrant heritage, the statue of Liberty, with a gargantuan, made for television, spectacle. The most nativist president of the last fifty years lit the torch. A secular shrine is being built on Ellis Island by America's most popular capitalist, an immigrant's son who envisions nothing less than "an ethnic Williamsburg" (an interesting analogy: can Iaccoca give the rest of us an "ethnic" history that is as sanitized as Rockefeller's slaveless, outhouseless, vision of early "WASP"-America?). At the same time politicians have, after several years of effort, finally hammered out a legislative package that seeks to limit the entrance of the current crop of huddled masses.

While the celebration of "ethnic" identities has never been louder, anti-immigrant sentiment is the strongest it has been in a generation. A recent survey (*The New York Times*, July 1, 1986) indicates that half of the citizenry of the nation of immigrants want immigration reduced, yet, by a large majority, these same Americans report that new immigrants would be welcomed in their neighborhoods. Nearly half of those surveyed believe that most new immigrants "end up on welfare," but virtually the same number believe that immigrants "work harder than people born here." Americans consistently report that they want tougher immigration laws, yet they continue to demonstrate by word and deed that do not want them enforced.[1]

This deep ambivalence makes immigration issues more complex for the U.S. than they are in European societies. The old question of "whom shall we welcome?" cuts to the core of America's fiercely nationalist, yet always problematic sense of identity. Thus, while U.S. immigration policy is always in part a reflection of shifting labor demands, it is complicated by the dynamics of ethnic politics and broader shifts in the political culture. Today,

1. *The New York Times* - CBS poll indicates that by a clear majority, Americans oppose the deportation of "illegal" immigrants who have lived in this country several years without breaking any other laws.

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the immigration debate is at least partially shaped by what might be termed competing nostalgias. Nativism is, of course, a nostalgic doctrine: it seeks a "return" to an imaginary foreign-free yesteryear. On the other hand, the defense of immigration is increasingly made in equally nostalgic terms: the romanticized image of the past not being Protestant yeoman farmers or small town America, but rather the crowded, bustling, fecund, turn-of-the-century Lower East Side.

As both scholars and politicians have once more turned their attention to immigration and its role in American life, the effect of this nostalgia has become apparent. As Nathan Glazer puts it in *The Clamor at the Gates*, America is, for the third time in this century, attempting to "finish" itself. Yet, as in the previous attempts, the debate around immigration has remained remarkably insular, preoccupied with American imagery rather than world reality. Unfortunately, much of the scholarship this debate has inspired has been mired in the same isolation. With a few notable exceptions (the work of Saskia Sassen Koob and Alejandro Portes comes to mind) the study of immigrants and their children as "ethnic" groups in American society, which emerged as a virtual sub-discipline in the early 1970s, has remained largely innocent of the studies of international migration that were inspired by more global conceptions of the world economy (and vice versa).

The continuing effect of "statue of liberty" imagery is evident in the title of David Reimers' *Still the Golden Door*. The book is one of the most comprehensive pieces of immigration scholarship produced in recent years, and will be required reading for anyone concerned with third world immigration for years to come. This fact makes its failure to place the U.S. experience in any sort of comparative international framework all the more striking. The book is informative, both in its strengths (which are considerable) and in its weaknesses, which are the weaknesses of the entire immigration debate.

In his first three chapters Reimers provides an extremely useful review of the twists and turns of U.S. immigration policy from World War II until the present. Unwaveringly atheoretical in tone, Reimers leaves us to draw our own conclusions from this material, but several themes emerge clearly. The first is that the key factors shaping postwar U.S. immigration policy have been American foreign policy (notably anti-communism) and domestic ethnic politics. The latter became increasingly important during the early 1960s, as the children of immigrants formed a vocal and well organized lobby on behalf of immigration reforms. Second, since U.S. policy makers have based their actions on these domestic political concerns and have been virtually oblivious to developments beyond the borders, they are often caught off guard by the consequences of their actions. Third, the immigration debate has consistently cut across the usual left-right distinctions of U.S. politics, often creating remarkably strange political bedfellows. Civil libertarians and Mexican-Americans have found themselves aligned with

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reactionary agricultural interests, while nativist and racist lobbies have occasionally found themselves on the same side as organized labor. Finally, despite the frequent assertion that racism is a fundamental constant in American life, the consensus of American public opinion on "foreigners" of various racial groups, particularly of Asians, has shifted enormously over relatively short periods of time.

The U.S. entered World War II with the 1924 quota system still in place, a system whose frankly stated design was not just to freeze the ethnic composition of the U.S., but (in a remarkable instance of the "return to normalcy" politics of the twenties) to "correct" that balance to the levels of 1890. Asians were excluded completely (although a few managed to slip in through legal loopholes) while Latin American immigration, so vital for southwestern agriculture, was controlled by local, and often extra-legal means. Prior to the war the quotas were popular and strictly enforced: even the number of Jewish refugees from Hitler's Germany was sharply regulated, a contrast to the policy towards post-war refugees from European Communism.

During and immediately following the war the U.S., the ally of China and foe of racist Germany, began to make significant alterations in the racial bias of its immigration policy. Small quotas for Chinese, Indians and Filipinos were added, and the naturalization of Asians was permitted for the first time in decades. Reimers is careful not to exaggerate the significance of these reforms. The numbers of Asian immigrants permitted remained tiny compared to the enormous number of European "displaced persons" admitted following the war and Asian immigration was further limited by special provisions for citizens of Latin American nations of Asian ancestry. Nevertheless these reforms represented a major reversal of previous policy. Asian exclusion had been one of the oldest and most popular features of American immigration law. In 1924 the Senate had reaffirmed the principal of perpetual Asian exclusion by a lopsided vote of 71 to 4. Further, Asian exclusion was now being opposed on the grounds of racial justice: "Our breaking down of immigration and naturalization barriers may do much to dull the edge of Jap propaganda" (p. 15) noted Brooklyn Congressman Emanuel Celler, (his "Jap" reference somewhat dulling his own alleged commitments to a non-racist policy). Celler, an immigrant's son representing a largely immigrant district, would emerge during this period as a champion of immigration reform.

Still, anti-immigrant sentiment remained strong during the 1950s. The McCarran-Walter act of 1952 reaffirmed the 1924 quota system, making several major adjustments in the interest of anti-Communism. This bill, while condemned by President Truman as "a slur on the patriotism, capacity and decency of a large part of our citizenry" (p. 63), nevertheless overrode a presidential veto. Anti-immigrant hysteria in the Southwest

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prompted the Eisenhower administration to undertake "Operation Wetback" (the name says volumes!) in 1954. In this sweeping, military style operation approximately one million illegal but long tolerated Mexican agricultural workers were rounded up and unceremoniously dumped on the Mexican side of the border, along with an unknown number of "Mexican-looking" legal residents and U.S. citizens. One wishes Reimers had given more attention to these events. Almost completely forgotten among English-speaking Americans, the memory of "Operation Wetback" continues to color the immigration issue for Mexican Americans, especially in the Southwest.

Yet in 1965, only eleven years after "Wetback," the U.S. enacted immigration reforms that eliminated quotas altogether, setting a 20,00 person limit per country (a huge advantage for citizens of small nations), overall hemispheric limits and a system of preferences for admission that emphasized family reunification over labor requirements. Coming a mere thirteen years after McCarran-Walter Act, these reforms represent a remarkable turn-around and a major victory for the mobilized representatives of America's diverse "ethnic" groups. That they were passed with little controversy also reflects the broad rethinking of the role of race and ethnicity in American life taking place during the period. In his introduction to *Clamor at the Gates* Glazer (whose own 1962 work *Beyond the Melting Pot* was a major part of this shift in thinking) recalls that in the wake of "the radical change in American attitudes towards race that accompanied the rise of the civil rights movement... The attempt to freeze the composition of the American people by favoring (immigrants from) Northwestern Europe was increasingly seen as basically immoral and wrong." (p. 6).

Yet while the reforms of 1965 signaled the increased acceptance of American ethnic divisions, they also underline the insularity of the U.S. immigration debate. These reforms were in large part a victory for the children of the pre-1924 immigrants. Voluntary associations representing Southern and Eastern European Americans lobbied hard for the removal of national quotas, although by the 1960's this had more symbolic than practical significance for their constituencies. Reimers and Glazer both stress that no one envisioned that the bill would produce a dramatic shift in the ethnic composition of new arrivals. On the eve of the bill's passage, Attorney General Robert Kennedy testified that the number of new immigrants from Asia would be approximately 5,000 the first year of the new law with "no great influx" after that (Reimers; p. 77). Not one witness or legislator disagreed with this estimate. Only a small influx was anticipated for the newly independent micro states of the Commonwealth Caribbean, oblivious to the fact that Great Britain had virtually cut off Commonwealth immigration in 1962. By the late 1970s Asian and Caribbean nations would, along with Mexico, lead the world in immigration to the U.S., sending hundreds of

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thousands of legal immigrants each year. This result could not have been further from the minds of the liberal reformers of the 1960s.

How could the legislators have miscalculated so badly? The answer seems to lie in the terms of the debate. As politicians refought the battles of 1924, the real conditions of the rapid, disarticulated development in the third world were ignored. Yet here Reimers' own limited focus does not permit him to explore the question further. He has little to say about population changes in the third world, and less to say about role of U.S. capital in third world development. He does take some note of U.S. cultural hegemony, with a sharp eye for detail: "By the late 1970s and early 1980s most Asian and Latin American nations received American produced (television) programs such as "I Love Lucy" and "Dallas" with their visions of bountiful consumer goods ... Over half of all imported programs in the Philippines originated in the United States and over 90% of those imported in Korea were American manufactured ..." (p. 98) Yet he does not explore how these cultural images might lead to immigration, or how they shape the actions and expectations of immigrants once they arrive.

Reimers does go on to discuss the positions of various immigrant groups in the U.S. today, but without a unifying theoretical focus these chapters read a bit like a laundry list of recent immigrant experiences. In his attempt to be all inclusive he provides what is basically a collection of fascinating vignettes that offer a reminder of the complex role ethnicity plays in the American economy (New York's fruit and vegetable business is dominated by Koreans; most low-cost motels of northern California are run by recent immigrants from India; "Chaldians," members of an Arab Catholic sect from the village of Telhaif in northern Iraq, control the corner grocery store business in Detroit, Michigan, etc.). Yet Reimers gives us little more than description. The larger questions, such as why certain groups prosper in long moribund niches in the U.S. economy, are raised but not examined.

Similarly, on the question of undocumented aliens, Reimers provides a good overview of the problem, without really venturing an opinion on larger questions he raises. Since the 1960s virtually all observers agree that there has been a massive increase in the number of undocumented aliens entering the U.S., although estimates of how massive vary widely. Perhaps more important, "illegals," once largely restricted to southwestern agriculture, are now found throughout the low wage sector of the national economy. During this same period, Reimers documents, the agency responsible for maintaining the borders, the Immigration and Naturalization Service (INS) remained underfunded, absurdly understaffed, incapable of maintaining its own records, and according to many reports, inept and corrupt. Yet again the question of why this is true goes unexplored. While Americans may rail against massive hordes of "illegals" coming to take "our" jobs, they have never proved willing to pay for an effective INS, nor will they tolerate even small (at least by European standards) inconveniences in the in-

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terest of an effective immigration policy. Thus the INS attempts to enforce immigration law through undermanned boarder patrols, the use of informants and sporadic raids on places of employment. The very arbitrariness of this policy may intimidate individual immigrants, and probably serves to limit their wage demands, but the total number deported remains so small as to have no appreciable effect on the availability of immigrant labor.

Clearly employers are served by this situation, but "capitalist interests" can hardly supply the total explanation for it. The INS, with the possible exception of the IRS, is the least popular branch of American law enforcement, even among workers who compete directly with immigrants for jobs. Americans may want tighter border controls, but enforcement anywhere other than at the border itself has little popular support today. Again the American ambivalence is apparent.

Where do the illegals fit into the economy? Reimers' review of the evidence reveals more than one answer. Some are indeed terribly exploited, living under near slavery conditions. Others, however hold quite decent jobs. Some circulate back and forth from their homelands, some are long-term but (at least in their own minds) temporary sojourners, while others plan to stay permanently and resemble legal immigrants in most respects. Large numbers eventually adjust their status and become legal immigrants and more will do so under the amnesty provisions of the 1986 immigration bill (although it should be noted that this amnesty covers only a minority of the undocumented population and may even increase the isolation of the remaining "illegals").

Do immigrants, legal or otherwise, take jobs from citizens? Do they contribute more than they take from the economy? Are we at risk of creating a permanent underclass of non-citizen workers? Again Reimers gives us a thorough review of the well-known arguments, pro and con, before very briefly presenting his own generally optimistic conclusions. Immigrants, he argues, will continue to do well in the U.S., and provided that their numbers stay at about current levels, a bit over 500,000 per year, they will probably benefit the U.S. as well. The fears of those who worry about new immigrants being unassimilable for reasons of race, language or cultural distance are discounted as simply out of touch with American history. In any event, the U.S. is likely to remain the "golden door" for third world immigrants. The reasons for their coming will in all likelihood continue, and the political cross pressures in the U.S. today make a 1924-style cut-off of immigration unlikely, occasional shrill voices not withstanding.

Similar, if not always as optimistic scenarios are presented in Nathan Glazer's edited volume *The Clamor at the Gates*. A collection of articles by policy analysts, economists and sociologists, most of these works were inspired directly or indirectly by the debate over the failed Simpson-Mazzoli immigration bill, which, while dashed upon the rocks of election year politics, formed the basic outline of the immigration legislation passed in 1986.

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Ranging from liberal to mildly "neo-conservative," the authors provide a range of mainstream American policy thinking. It is also interesting in that Glazer, who was so much a part of liberal reassessment of ethnicity in America in the early 1960s, should now be turning his attention to immigration policy. It is thus disappointing that Glazer does not use the opportunity to reflect more deeply on the changes in American ideas about ethnicity that frame this debate. He touches on these issues only briefly in his short introduction. Still, just as *Still the Golden Door* provides an overview of recent immigration history, *Clamor at the Gates* presents a good indication of the state of the immigration debate in public policy circles in the wake of Simpson-Mazzoli.

The volume's first five articles deal directly with the legislative debate over the provisions of the Simpson-Mazzoli Act. Lawrence Fuchs, the intellectual most closely associated with the bill, gamely defends most of its proposals, while Harris Miller provides a history of the legislation. The most interesting piece in this section is Rodolfo 0. de la Garza's essay on Mexican-American politics. Politicians were almost universally caught by surprise when Mexican-Americans and other Hispanics rallied to defeat the Simpson-Mazzoli bill. In opposing tighter immigration controls Hispanic Americans puzzled most observers by apparently voting their ethnic sentiments over their own economic interests. In explaining this, Garza points to the historical isolation of Mexican-Americans from the dominant culture and their lack of comparability to European immigrants. He notes that Mexican-Americans do not perceive themselves as hurt by immigration, although their communities are among the most effected. They do, however, have a great and historically well-grounded fear that anti-immigrant measures will quickly turn into racist anti-Mexican measures, with little concern for the niceties of citizenship.

While Garza does not consider alternative theoretical models to understand the Mexican American experience, Peter Skerry does. In what is probably the book's most thoughtful essay, he specifically asks whether Mexicans can be thought of as an ethnic/immigrant group, analogous to those from Europe, a racially defined caste (like blacks), or as an internal colony, whose isolation can be traced to their position as a conquered people at the periphery of metropolitan society. While Skerry does not take us through all the ink that observers on the left have spilled over this issue (which is probably just as well), he is subtle enough to make the distinction between social theory as it describes reality and as it informs political ideology. Thus, while he argues that today the immigrant perspective adequately accounts for the position of Mexican-Americans, many of whom are joining the mainstream economy (and, he argues, may be available for recruitment by the Republican Party), the fact that many Mexicans *see* themselves as a racial minority and that State policy continues to define them as such has its own consequences. The "minority" and "internal colony" perspectives are now in-

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grained among many Chicano organizations, particularly those who deal directly with the state, and thus continue to shape the group's politics.

The other articles on America's "new" ethnic groups are more standard in tone. Ivan Light presents a piece of his larger study on Korean entrepreneurialism in Los Angeles while Peter Rose notes the remarkable transition of Asian-Americans from despised pariahs to a "model minority." While both sound some cautionary notes against merely substituting positive stereotypes for negative ones, on the whole they see these groups as making laudatory strides towards the "American Dream" of prosperity, while retaining, in good pluralist fashion, the private elements of their ethnic identity. Rose commends their success while noting that the current positive image of Asians is itself a resource: even the most impoverished and uneducated South East Asian refugees benefit from entering U.S. society during a period of "philo-Asianism." This philo-Asianism is in part a nostalgic tribute to those earlier immigrants they are reminiscent of (Rose makes the standard comparison between Asians and Jews), as well to their own behavior, which in neo-conservative eyes is particularly admirable. Rose maintains that despite the fact that many Asians have benefited from affirmative action programs, most remain committed to private enterprise, rather than power politics and the welfare state, as the vehicle of upward mobility. Yet, while Rose admires this capitalist "ethos," he also finds it disturbing: "It is this ethos ... that causes many to look to them (but rarely to the Hispanics) as archtypes of acculturation. And yet a paradox remains. While more and more Asians have come to represent the best of what those who promulgate "Americanization" would like to create ... they are not and will not be fully assimilated, at least not in the foreseeable future." (p. 212)

That, however, is precisely the point. The celebration of the new immigrants is in large part an expression of nostalgia for an immigrant past and dissatisfaction with the American present. According to this view it is immigrants who paradoxically embody what is best in the American tradition. For all of their entreprenuerial success, they have not yet fallen prey to the "cultural contradictions" of an American capitalism which both requires and erodes non-marketplace spheres of life. America, it is argued, works best for those on whom it has worked the least. Unlike the self-absorbed American middle class, the immigrant is free of the "American malaise." More importantly, unlike the "self-destructive" American poor, the new immigrants are not turning to the welfare state to obtain what the marketplace cannot provide. Thus, philo-Asianism and pro-immigrant sentiments in general can also serve as a not-so-subtle upbraiding of America's "other" minorities. A South Bronx high school principal recently told me that he welcomed the influx of new Vietnamese and Cambodian students into his otherwise black and Puerto Rican school because, "being a minority group themselves, they serve as a good example that you really can make it if you want to."

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Glazer's own essay on immigrants and education manages to get to some of the deeper issues of where immigrants fit in American society and why American attitudes towards immigrants are more complex and paradoxical than those seen in Europe. First, however, Glazer engages in what is by now the perfunctory neo-conservative ritual of declaring the sixties over.

The roots of American education's experiment in bilingualism and biculturalism, Glazer argues, can be found during that turbulent decade, when the schools were besieged by the rising demands of the poor and minorities. Utilizing mass movement politics and an activist judiciary, these groups intimidated American intellectuals, disillusioned of their own capacity to solve the nations problems in the wake of Vietnam (no kidding, he actually says that!), into a series of ill-considered concessions. In the resulting confusion the task of educating immigrant children was largely subsumed into the task of protecting the rights of the poor, and by the mid-1970s a host of counterproductive programs for "language minorities" went into place. Today Glazer maintains (correctly I think) that the minority parents themselves are putting a stop to this. Immigrant parents want their children to learn English and black parents, particularly once they gained control of many of the nation's larger school districts, became less concerned with "black culture" than that their children become literate and employable.

That having been said, Glazer turns to the more interesting question of why American education and American society in general has proved so resistant to any form of bilingualism, at a time when such policies are gaining support in Europe. The answer, he maintains, is not that Americans are greater cultural nationalists, but rather that they are less so. In most European societies immigrants are always envisioned as temporary, "guest workers," even now that their presence has become a permanent feature of those societies. Britain, France and the Netherlands have substantial number of second generation "foreigners," while other nations circulate temporary individuals in and out of permanent "immigrant" niches in the economy. Nevertheless, the immigrant remains outside the society. He is encouraged to keep his culture and educate his children in his own language, as this reaffirms his separateness and his tie to his "homeland".

In the U.S., on the other hand, every immigrant is seen as a potential citizen. Whatever the evidence to the contrary, most Americans see immigration as a continuation of an older process of incorporation that they want and expect to continue. Thus the public schools, even while they are being abandoned by much of the American middle class, are still seen as a vehicle to Americanize these immigrants and Americanization means, above all, the public use of the English language.

Perhaps, as Glazer argues, an immigrant nation requires universal modes of expression. Yet the linguistic nationalism on the rise in America today is disturbing because it displays how, paradoxically, a nation of immigrants is

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particularly vulnerable to xenophobia. Setting aside for the moment the many valid practical criticisms of bilingual education as currently practiced, the deep emotions the issue stirs points to ambivalent feelings about the immigrant. He is welcomed and celebrated if he chooses to be an American, that is, if he validates the nation's immigrant traditions. Today's immigrants receive all sorts of acclamation (in some circles anyway) to the extent that they seem to recreate the patterns of earlier newcomers. Yet deviation from the established pattern of incorporation is deeply suspect.

The economic impact of large-scale immigration is examined by several writers in *Clamor at the Gates*, and aside from Vernon Briggs' warning about disfunctions of a policy that admits immigrants on the basis of family connection rather than on U.S. labor needs, the assessment, like Reimers', is largely favorable. Policy analyst Thomas Muller argues quite convincingly that immigrants make a positive contribution to the economy as a whole and that immigration has never been a substantial cause of unemployment in the U.S., even among the poor or minority groups. While the question of whether immigrants actually create jobs or merely respond to emerging labor needs is ultimately a matter of speculation, he reminds us that America's deepest and longest depression followed the enactment of the most restrictive immigration laws in the nation's history.

Why then the constant political hullabaloo about immigrants taking jobs? Muller, in the language of a man who spends a good deal of time on Capital Hill, explains it thus: "There has always been and will continue to be an element of the population opposed to immigration for reasons other than economic. These opponents will express economic arguments for restrictive measures because such positions are more socially acceptable than arguments based on race, ethnicity, religion or place of origin." (p. 131)

An example of precisely the sort of arguments Muller is talking about is provided by the recent policy tract by Colorado Governor Richard Lamm. Lamm is known as a proponent of "new ideas" within the Democratic Party, and, unlike those of that other well known Coloradan, some of his notions are indeed quite novel. If many of his public stances, such as his objecting to the amount of the nation's resources used to keep the terminally ill alive, seem more calculated to generate public attention than serious debate, he often does raise issues not usually addressed by American politicians. However, in *The Immigration Time Bomb*, Lamm and his co-author Gary Imhoff, are disappointing. In their opening pages they promise readers "heresies." They pronounce themselves ready to speak the unspeakable truth, to confront outmoded assumptions, and to defy both the left and the right in order to come up with a new, post-liberal vision for America in an age of limits. In fact what they deliver is basically a traditional American nativism thinly cloaked in economic and ecological terms. If there is something a little bit bold about the book, it is in just how thin that cloaking is.

The thrust of the book is that, in a world of scarcity, Americans can no

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longer afford a generous immigration policy. Both the economic and ecological resources of the world are finite, too finite to "give everyone a 'developed country' standard of living" (p. 227). Since there is not enough to raise consumption to U.S. levels, and since Americans cannot and will not make do with less, we had better start practicing an international version of lifeboat ethics, or the American way of life will be swamped by wave after wave of third world immigrants.

Lamm and Imhoff do express sympathy for the plight of exploited illegal immigrants, although they mix this with classic examples (to use an overused phrase) of victim blaming. At one point they argue that the existence of an illegal underclass is responsible for the loss of respect for manual labor in the United States. Elsewhere they imply that the presence of low-wage workers has crippled the industries they have worked in by leading companies not to invest in labor saving technology and falling behind foreign (again the fear of the foreign) competition. They also assert, in the interest of demonstrating their own liberalism, that blacks and Hispanics are now bearing the brunt of the economic dislocation that immigrants supposedly cause. The fact that the black and Hispanic leadership does not see things that way is discounted: Lamm and Imhoff know that American minorities, evidence to the contrary notwithstanding, are seething with resentment at the immigrants stealing their jobs; their leadership simply lacks the courage to address the issue. They do make some valid points when discussing affirmative action programs that have disproportionately helped new immigrants rather than minorities they were intended for. Yet whether this is a matter of immigrant guile or of administrative subversion is never taken up.

Economic and ecological concerns are, however, only part of Lamm and Imhoff's arguments. Their true colors show more clearly when they discuss "fragmentation" of American culture. Liberal pluralists, they maintain, have exaggerated past immigrant contributions to the U.S., and the new crop can be expected to contribute even less. Further, immigrants are often a pretty lawless bunch. In a central chapter, they warn that the U.S. is now besieged by an immigrant crime wave that goes unnoticed only because of the media's squeamish refusal to report the ethnicity of offenders. Hiding behind a Cuban-born Harrisburg, Pennsylvania police detective whom they "quote" for the better part of 18 pages, they rail on and on about the criminality and violence of the Cuban Mariel boat-lift refugees in terms that could have been drawn from an episode of television's "Miami Vice."

Unlike most conservative critics, however, Lamm and Imhoff are not marred by excessive loyalty to big business or knee-jerk anti-communism. They excoriate employers who rely on illegal immigrant labor (no word on how consumers would react to price increases if illegals disappeared) and they even say some nasty things about the "old" Cubans — the American right's favorite ethnic minority. All in all one gets the distinct impression

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the authors simply do not like foreigners.

Being a polemic, it would be unfair to hold *The Immigration Time Bomb* to the standards of scholarship one would expect of an academic work. Yet Lamm and Imhoff are so loose with the facts and so wild in their assertions, that it calls for some comment. A few examples will suffice. In arguing about the ecological depletion of U.S. resources, they present estimates of U.S. oil reserves derived in the 1950s, which conveniently exclude Alaska (p. 8-9). In the chapter on criminality, in which they shift back and forth between discussing the crimes of illegal immigrants, legal immigrants and naturalized citizens, the number of professional criminals included in the "Mariel boat-lift" is variously estimated at 40% (p. 49), 80% (p. 63) and "almost everybody" (p. 63). All of these figures contrast to the Justice Department's estimate of 2,000 to 3,000 of the 127,000 Mariel immigrants. While the number of lumpen types among these refugees is seen as evidence of Cuba's exporting its social problems to the U.S., a few pages later the number of white collar professionals and technicians among the lumpen types is seen as indicating the presence of sophisticated spies and saboteurs. Historical facts fare no better than contemporary ones: at one point the Know Nothing Party of the 1850's is described as anti-"southern and eastern European" (they were primarily anti-Irish).

In addition, the authors are promiscuous in drawing on experts and academic sources. They frequently present extremely long quotes from dubious sources as representing the general opinion in fields where no such consensus exists. At other points they utilize the work of academics who would by no means agree with their conclusions. For example, the Marxist anthropologist Nina Schiller is invoked to demonstrate the material basis of ethnicity, as if that makes ethnic claims less valid than other forms of social identity.

What is most disturbing about *The Immigration Time Bomb*, however, is that despite their looseness with the facts, Lamm and Imhoff demonstrate a mastery of the pessimistic, self-interested tone that passes for realism in the age of Reagan. Their mix of cultural conservatism, environmentalism and populism (along with a fashionable disdain for "big government") is well suited to the national mood and their repeated rejection of "old ideas" and "solutions appropriate to the past" (read: the welfare state, ethnic pluralism and sixties liberalism) is calculated to reach to the young. The theme of ecological protectionism in an era of limits will play well to many audiences including some which think of themselves as being on the left. The "neoliberal" wing of the Democratic Party might invoke such arguments in their efforts to recapture middle-class youth in the post-Reagan era. Ironically, for all of their sound and fury, Lamm and Imhoff's legislative proposals are actually quite tame. It is not their specific proposals however, but their immigrant bashing that is likely to be remembered.

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What all of the above books share is their myopia; none make a systematic attempt to locate the current American experience in its international context. Yet more than any other social phenomenon, international migration links the developed and underdeveloped world on the most intimate terms. It means that the third world does the laundry, minds the children and washes the bathrooms of the first. While the political and cultural role that immigration has played in the United States is unique and should be appreciated in light of its own history, it is increasingly clear that no nation's migration experience can be adequately understood in isolation.

Approaches that view the world as a unified system have their own drawbacks, of course, not the least of which is a glacial time frame that often makes these theories fairly useless when it comes to informing political action. Nevertheless such models have served to sensitize us to the interconnectedness of the global economy. As the flow of labor and capital between the developed and underdeveloped world is ever more closely intertwined, it is unfortunate that those who study immigration policy often chose not to draw on these insights. As a result, the discussion of American immigration policy remains more focused on this country's dialogue with its own past than with coming to grips with the problems of the present and the future.

Philip Kasinitz

Benjamin Barber, Strong Democracy: *Participatory Politics for a New Age*, University of California Press (Berkeley: 1984), 320pp.

The problem with liberal democracy, according to Barber, is that liberal political theory and liberal institutions inevitably subvert democratic values. Hence, Barber concludes, if democracy is to have a future, it must sever its connection with liberalism. This, in a nutshell, is the theme of *Strong Democracy*.

Barber is not simply a democrat; he is a communitarian. Like so many critics of liberalism across the political spectrum from Burke to Marx, he regards liberal individualism as a corrosive that dissolves the civic bond, leaving men psychically isolated, politically alienated, and powerless. He labels liberal democracy a "thin theory" of democracy, because it treats public life as a means to privatistic ends. By contrast, the strength of "strong democracy" — Barber's participatory alternative to liberalism — lies in its vision of politics as the deliberate creation of common meanings and common ends in a pluralistic society.

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Any serious critic of liberalism faces the difficulty of confronting not one theory, but a family of theories embracing a wide range of political tendencies. Hobbes and Locke, Jefferson and Hamilton, Bentham and J.S. Mill, Rawls and Nozick, all may be classified as liberals; however, they certainly are not of one mind about either philosophy or politics. Barber, who is well versed in the variety of liberal theories, approaches his quarry by distinguishing three political "dispositions" — anarchist, realist, and minimalist — that are used to characterize the many faces of liberal democratic thought and practice. The American political system (the focus of Barber's concern) is said to reflect all three dispositions.

Barber presents liberalism as a response to the problem of conflict, which he assumes to be endemic to politics. The liberal as anarchist wants to deny the inevitablility of conflict among properly self-regarding and entirely self-sufficient individuals. The anarchist flees from politics because he regards power (and the pursuit of power) as inherently evil. Fear of domination, which makes the individualist anarchist an enemy of the state, also makes him hostile toward the democratic community, for it, too, is a reservoir of power. For the liberal anarchist, freedom is a lonely affair.

Through its anarchist disposition, liberal democracy treats politics as the art of restraining power. Through its realist disposition, on the other hand, politics becomes the art of power. The liberal realist pessimistically accepts the inevitability of conflict and, with Hobbes, recoils in horror at the prospect of unending social chaos. The realist solution is a Hobbesian one: power must be employed to repress conflict, for there is no other guarantee of peace and mutual security. Barber describes the realist disposition as knowing no middle ground between the coercive state and complete license, so that liberty and power remain hopelessly irreconcilable; government forever threatens individual freedom, and freedom forever jeopardizes peace.

The third liberal disposition, minimalism, emerges from the realist dilemma. Minimalists seek to overcome the spectre of the authoritarian state by imposing a barrier of rights between the individual and government. At the same time, liberty is prevented from degenerating into license by the doctrine of toleration, which teaches respect for the plurality of persons and points of view. Barber is most sympathetic to the minimalist disposition, for he believes it points the way beyond liberal democracy to something better. Yet minimalism, too, is plagued by a literal self-centeredness that denies liberalism the foundation on which to build a true political community.

Barber discovers the roots of liberal individualism and privatism in a philosophical "inertial frame of reference," or set of pretheoretical givens shared by all three dispositions. He describes the "inertial frame" as consisting of the "axiom of materialism" (proclaiming that we are material beings) and five corollaries: "atomism" (that the individual is a social monad); "indivisibility" (that individuals do not experience inner conflict);

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"commensurability" (that individuals obey the same laws of behavior); "mutual exclusivity" (that no two persons can occupy the same physical, political, social, or psychological space at the same time); and "sensationalism" (that individuals respond only to physical causes). Each corollary is said to provide the pretheoretical ground for some aspect of liberal theory. Thus, individualism relies on a prior commitment to social atomism. Psychological hedonism assumes a rather simplistic, "indivisible" human personality. The liberal notion of equality comes to be grounded empirically in certain shared behavioral predispositions. The brute fact of our separate existences and inability to share another's physical place or mental state supports the theory of power and conflict at the heart of liberalism. Finally, what Barber calls "sensationalism" does triple duty as the basis for emotivism, utilitarianism, and interest theory.

Beyond this wholly arbitrary "inertial frame" lies the burden of liberal epistemology. Barber claims that the paramount epistemological assumption of liberalism is the Cartesian assertion "that there exists a knowable independent ground — an incorrigible first premise or 'antecedent immutable reality' — from which the concepts, values, standards, and ends of political life can be derived by simple deduction." Barber regards this as a false premise with perverse consequences. It dooms liberalism to engage in what John Dewey labeled "the quest for certainty," a fool's errand in a world of contingent circumstance where the best we can hope for are proximate truths. As Barber sees it, the bootless quest for certainty has led liberalism down the blind alleys of sterile empiricism, self-obsessed idealism, ahistorical theorizing, and psychological reductionism. The latter undermines the very possibility of mutualism in politics by treating alienation as the paramount feature of human existence.

There is surely some element of caricature in Barber's critique of liberalism. It is not always easy to recognize individual theorists in his sweeping generalizations, and there is some confusion over whether he believes he has characterized what *some* liberals *have* thought, or what *all* liberals *must* think about politics and society. The latter is a stronger claim, but also more difficult to support. It seems an adequate reply to Barber's objection to liberal individualism that liberals can be political individualists without denying the fact (or value) of social interdependence. In this narrow application, political individualism is less an obstacle to community than a moral constraint on what may be required of, or done to, community members in the name of the group. After all, not many liberal thinkers have confused the atomistic state of nature with the real world, and fewer still have proposed it as a social ideal.

Liberal thinkers have sought to distinguish the social and political spheres of life, regarding the latter as a thin, protective envelope surrounding (but not defining) the former. Thus, liberal political theory tends toward procedural formalism and, historically, has not shown much concern for

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the character of the community. Social conservatives have long recognized this as a defect in liberalism. (Barber approvingly quotes the likes of Edmund Burke, Robert Nisbet, and Michael Oakeshott on this score.) And, as Barber notes, much the same line of criticism has been developed from an opposing political perspective by Marx, Durkheim, and the sociological tradition. In this view, liberalism is heir to the disintegration of traditional social structures, but lacks the understanding or the capacity to reintegrate society. Where the organic roots of community have withered, liberal individualism easily oversteps its political role, fostering alienation and anomie in a deracinated world.

It is this insight that gives force to Barber's complaint against liberalism. Deftly, he points to the irony that liberalism, itself a cause of much social dislocation, helps engender the illiberal "pathologies" of modern mass society, including totalitarianism. Moreover, he is keenly aware of liberalism's seeming helplessness in the face of its own vulnerabilities. Liberalism champions individual freedom; however, its stubborn attachment to the concept of "negative freedom" amounts to the virtual negation of freedom in a marketplace dominated by large corporations. Liberalism fears power; but realism about the use of power inhibits cooperation and turns politics into a brutal competition for private advantage through control of the state. Liberalism celebrates pluralism; yet, the doctrine of tolerance can be used to justify political indecisiveness, effectively allowing powerful private interests to substitute their judgment for the community's in matters of public concern.

Ultimately, liberalism founders for want of a viable concept of the common good. Barber follows Rousseau in rejecting the aggregation of private goods (or "particular wills") as a means of achieving the good of the community. His theory of strong democracy is premised on the assumption that citizens are capable of defining, through public deliberation, a common purpose distinct from their private, individually chosen ends. Strong democracy, in Barber's formal definition of the term, is "politics in the participatory mode where conflict is resolved in the absence of an independent ground through a participatory process of on-going, proximate self-legislation and the creation of a political community capable of transforming dependent, private individuals into free citizens and partial and private interests into public goods." Where liberalism conceives of politics as a response to the problem of conflict, strong democracy views politics as the art of building a community, a world of shared meanings and common ends in which conflict gives way to accommodation.

Given that strong democracy abandons the futile quest for certainty, the common good can have no objective content. It is not something to be discovered empirically or intuited metaphysically by a political scientist or a philosopher king. Rather, the common good must be consciously created by the citizens themselves as they confront matters of public importance

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that demand a choice. Here there can be no one "right" choice, "only alternative visions that compete for communal acceptance." And past decisions are always open to review. The challenge, Barber writes, "is to envision the human future and then to inspire a passion in others for that vision — often by adapting it to their vision."

Strong democracy does not require a revolution in human nature. It does assume, however, that men are capable of fellowship, and that fellowship may be promoted through civic education. Barber considers political participation itself to be the foremost instrument of civic education. Participation in strong democratic politics requires that the individual see himself as a citizen, having interests in common with other citizens. For the democratic citizen, "'I want X' must be reconceived as 'X would be good for the community to which I belong' — an operation in social algebra for which not every 'X' will be suitable." Representative democracy comes in for attack precisely because it limits the need for an active citizenry. Representation turns politics over to a class of professional politicians, encouraging apathy and privatism in the general population.

At the heart of strong democracy lies what Barber calls the concept of political talk. He has in mind something more than ordinary conversation. Unlike liberal democratic talk ("animal expletives meant to signify bargaining positions in a world of base competition"), strong democratic talk moves beyond the articulation of interests to the exploration of mutuality and the cultivation of friendship. Barber likens what he has in mind to the conversation of neighbors who listen empathetically to one another. "Politics," he explains, "is the art of engaging strangers in talk and of stimulating in them an artificial kinship made in equal parts of empathy, common cause, and enlightened self-interest." Barber does not seem to think that strong democratic talk need make any special provision to safeguard the dissenter; rather, he builds respect for dissent (or, as he says, bearing witness) into the concept of political talk itself. Quite simply, a healthy democracy slows dissent.

Likewise, a healthy (strong) democracy respects individual autonomy. Barber attempts to answer liberal fears of collectivist tyranny by distinguishing pluralistic strong democracy from "unitary democracy," where absolute conformity to an arbitrarily defined national purpose is exacted by the state as the price of membership in the community. Strong democracy protects the individual from a hostile majority by virtue of its inclusiveness; all who participate in public deliberation are by definition members of the community, and no decisions of public importance can be taken without full deliberation. (Indeed, majorities have no special status in strong democratic theory. Rather than ride roughshod over an intense minority, Barber thinks it likely that a strong democracy will defer decisions on issues that prove especially divisive.) Ultimately, however, the best defense of freedom and autonomy Barber can recommend is constant vigilance. "A moment's

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complacency," he warns, "may mean the death of liberty." Surely, Barber is in deadly earnest when he states that strong democracy is a demanding business, perhaps too demanding for ordinary men and women.

At times it almost seems that Barber's argument in support of strong democracy cannot keep pace with his exhuberant rhetoric. In one place he comes close to admitting as much himself, noting that "institutions that can facilitate the search for common ends without sabotaging the individuality of the searchers, and that can acknowledge pluralism and conflict as starting points of the political process without abdicating the quest for a world of common ends, may be much more difficult to come by than a pretty paragraph about the dialectical interplay between participation and community." There is a great deal of naiveté in Barber's discussion of participation and political talk, as when he suggests that judicial enforcement of the Bill of Rights "may actually do less to constrain a mob than would an appeal to the citizenship of its members." Why he believes that civic consciousness will magically vanquish bigotry and fanaticism is not clear. Certainly, he will find little support for his claim in the historical record.

Barber's enthusiasm for strong democratic talk is often puzzling, given his examples. Who, besides Barber, would confuse the artificial civility of debate in the United States Senate with the cultivation of fellowship? (Old Senate hands know that the less one Senator thinks of another, the more lavishly he compliments his colleague.) And it is not easy to see, as Barber does, the spirit of mutualism at work in the Israeli-Egyptian "dialogue" at Camp David (which, after all, was largely conducted through an intermediary). Most disturbing of all, Barber seems not to be aware that talk can fail when fundamental values or interests vital to the parties are at stake. Can we really expect adversaries in the abortion controversy, for example, to rise above their philosophical and theological differences and through conversation arrive at a common policy? Barber is surely right in denying the all too casual assumption that conflict is inevitable; but strong democracy comes close to wishing conflict away entirely.

What happens when push comes to shove, when men refuse to abandon their particular wills and embrace the democratic general will? Must they be forced to be free? Barber wants to avoid such questions. In his analogy, political arguments are like disagreements over what to order from a cafeteria menu. Liberal democracy would solve the problem through bargaining. Strong democracy, on the other hand, would have the quarrelsome patrons take over the kitchen and, through collective deliberation, plan a new menu suitable to all. This solution might succeed, for some people in some instances. But one would think that Professor Barber had been to enough faculty meetings to know that even persons ostensibly dedicated to rational exchange cannot always agree on a menu.

Strong Democracy concludes with a twelve point program designed to create

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strong democracy in the United States. Barber recommends such innovations as a national system of neighborhood assemblies with local legislative competence, a civic communications cooperative and civic videotext service to equalize access to information and facilitate debate, universal citizen service to inculcate civic values, and workplace democracy. A number of his proposals, like the initiative and referendum, echo reform movements of the past. Others, like the neighborhood assemblies, are more daring and invite further consideration. Barber insists, however, that we accept his program in its entirety or not at all. This seems an unreasonable and surprising demand coming from one who prizes public debate as much as he does. His rationale is that strong democracy cannot succeed if it is introduced piecemeal. That proposition itself, however, will strike many readers as a fit topic for deliberation.

Barber writes in an often breathless prose brimming with enthusiasm for his project. He clearly intends his message for a broad audience; indeed, the book is part academic treatise, part political manifesto. Introducing his theme Barber remarks, "There is one road to freedom: it lies through democracy. The last best hope now, as two hundred years ago, is that America can be America: truly self-governing and democratic, thus truly free." That he draws his patriotic rhetoric from the Langston Hughes poem, "Let America Be America Again" is a conscious reminder that America's political heritage belongs to the left as well as to the right. He reminds us also that patriotism is not the exclusive preserve of scoundrels. For that, and for the fundamental decency of his political vision, this book deserves the audience Barber seeks.

Stephen L. Newman

Pavel Campeanu, *The Origins of Stalinism: from Leninist Revolution to Stalinist Society*, M.E. Sharpe (Armonk, N.Y.: 1986), 185pp.

Stalinism just does not go away. Fifty years after the Great Purges, 34 years since Stalin's death, the system that bears his name continues to haunt the political and academic Left in the West. As "real socialism," it continues to oppress the peoples of the East. Years ago, we could console ourselves by "explaining" Stalinism as a "deviation" or "degeneration" from a once purer socialism. Yet this historical accident seems to possess an extraordinary viability. Stalinism has confronted threats to its hegemony by sending in tanks in Budapest, Prague and Kabul. It has withstood the revelations of the Gulag, the debacle in Kampuchea, the military coup in Poland, and twenty-six years of Fidel. For anyone who still takes socialism seriously, Stalinism remains a

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political and theoretical millstone. This burden is especially heavy for those East European Marxists who have been members of Communist Parties, and who have watched an apparently "transitional" social order consolidate itself into a system of oppression and stagnation.

The Romanian Marxist Pavel Campeanu is one of these people. Campeanu joined the miniscule Romanian Communist Party in 1940 and like most Romanian communists, spent the War years in prison for anti-fascist activity. Campeanu remains an avowed and very traditional Marxist, despite his having seen Romania evolve into the epitome of Stalinism — with all its arbitrariness, inefficiency, cultural sterility and personality cult. Trained as a sociologist, Campeanu headed the Opinion Polling Department of Romanian television until 1980. Having been awarded prizes by the Romanian Academy in 1964 and 1977, Campeanu does not number among Romania's few dissidents. Judging by the conspicuous absence of any reference to Romania in this book (with one minor exception), he seems to have no plans to engage the Romanian party-state in any test of wills.

In 1980, under the pseudonym of Felipe Garcia Casals, Campeanu published *The Syncretic Society*,[1] a short book describing the nature of what he called "premature socialism" and its relation to Stalinism. *The Origins of Stalinism* extends this project backwards to look at the preconditions for Stalinism's emergence. He locates these preconditions in the nature of the Russian revolution and the immediate post-revolutionary period.[2]

The syncretic society which is Stalinism is not a society of contradictions. Rather, it is a society of perpetual incompatibilities of "antinomies," to use Campeanu's terminology. Whereas contradictory forces eventually lead to some kind of resolution, the antinomic forces of Stalinism contain plurivocal tendencies which lead it in two opposite directions. Stalinism is a self-reproducing dead-end, a social order which leads only to perpetual stagnation.

One feature of Stalinism's uniqueness is the ruling party. Never has a social order been ruled by a party which monopolized both economic and political power. This party is not a ruling class, since there is no concept of proprietorship. And without a concept of proprietorship there can be no real classes, and hence, no class conflict.

It is not repression which defines Stalinism. Repression is just a result of the social forces which maintain it. Stalinism is a society "without theory," "without strategy." It is a society ruled solely by improvization, by arbitrariness. The "leading role of the party," valid during the revolution, has under Stalinism become party rule over society, a rule grounded in both economic and political control. Yet the party has itself become a bureaucratic servant of the "infallible leader." Infallibility is an inherent feature of all Stalinist social

1. (New York: M.E. Sharpe, 1980).

2. A forthcoming volume, provisionally titled *The Genesis of Stalinism* continues the study and focuses on the late 1920s and early 1930s.

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orders. Stalinism is not the first social order that had providential leaders, but it is the first — says Campeanu — that cannot exist without them. Criticizing the former leader's personality cult is but a method whereby the current leader establishes his own infallibility.

But how did all this get to be? *Telos* readers need not be bored with a recapitulation of theories of Stalinism's origins. Basically, there are theories which see Stalinism as a degeneration of pure socialism, theories that emphasize traditions of Russian despotism, those that see Stalinism as growing out of Lenin, those who see Stalinism in the works of Marx, and those that reduce Stalinism to Stalin's pathological personality, his seminary upbringing, etc.

For Campeanu, Stalinism is not to be considered an intrinsically Russian phenomenon. There are countries where Stalinism has evolved without Stalin, without the autocratic traditions of Russian history, even without the aid of a Marxist or Communist Party-led revolution. Some of the most vehement enemies of Stalinist societies are other Stalinist societies (Kampuchea-Vietnam, Albania-USSR, Romania-USSR). The Stalinisms of China, Hungary, Ethiopia and Cuba (to use Campeanu's examples) have evolved with quite different personalities and circumstances. What all these Stalinisms have in common, however, is that they are born out of revolutions which were both anti-capitalist and anti-imperialist. Hence, Marx cannot be at fault, since he only foresaw revolution taking place in the developed capitalist states which had already industrialized.

A second feature that these Stalinist societies have in common is that their historically significant classes — the bourgeoisie and proletariat — were both "immature." Imperialism had prevented the bourgeoisie from fulfilling its role as industrializer, while their largely peasant population made the proletariat too weak to replace the bourgeoisie. Yet industrialization was necessary both to develop the country internally and to break the chain of imperialism. In the absence of a strong bourgeoisie and politically mature proletariat, the task of anti-capitalist industrialization fell to the revoutionary political party. The origins of Stalinism lay largely in this fortuitous event.

It was fortuitous because these revolutionary parties had never developed a strategy for industrialization. In Leninist strategy, the party was but a temporary compromise meant to lead the proletariat to take over the means of production from the bourgeoisie. Now burdened with an unexpected mission of anti-capitalist industrialization, the party took over the economic management of society, recast the system of property, and using political control, juridical and extra-legal measure, embarked on its new mission. In doing so, the party became the central institution of the Stalinist social order. Industrialization was indeed achieved, but the antinomies generated prevented the society from moving onward towards a genuine socialism. Stalinism was born.

Of crucial importance for Campeanu is the contrast between the objective,

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historical necessities of Marxism versus the subjective, antinomic necessities of Leninist post-revolutionary strategy. Imperialism had created the first antinomic necessity; Russia was at once an object of imperialism and an imperialist country in its own right. Since the bourgeoisie had never developed the productive forces, it was left to the party to "anticipate history." "Capitalist relations of production were abolished not because the forces of production had reached a particular level but in spite of the level they had reached" (p. 17). Foreshortening the presumed natural sequence of social evolution — speeding things up — gave the Russian revolution its anticipatory character. Yet this shift from the historically necessary to the politically possible had its price. The price was syncretism, stagnation and eventually the consolidation of the monolithic Stalinist social order. Lacking a coherent theory, the party could only resort to the leader's infallibility. Revelations by the providential leader replaced proletarian democracy and party debates. Stalinism arose, then, out of the antinomic "nature" of the revolution which proceeded it. Under the influence of imperialism, the Russian revolution was anti-feudal, anti-bourgeois and anti-imperialist. The triumph of subjectivism, of anticipating history without strategy, laid the groundwork for Stalinism.

As a "mode of production," Stalinism has nothing inherently to do with Soviet Russia, Russian despotism, Stalin's personality, Lenin or Marx. Not even Communist Parties are necessary, says Campeanu. Cuba's party emerged only after the revolution, when a party was needed to lead its ill-fated anti-capitalist development. Rather, Stalinism is a product of anticipatory revolutions which take place in societies where the party substitutes itself for the historically immature proletariat in achieving industrialization, i.e., in breaking the bonds of underdevelopment.

Campeanu thus uses the Russian revolution to prove a more general point. In this effort he relies on certain classics of Russian revolutionary history — Lenin, Trotsky, the *History of the CPSU*, Bettelheim, Schapiro, Carr and Mandel. His principal source, he admits, is Trotsky. Yet Campeanu is not writing a new history. His purpose in this long, extremely repetitous work is simply to decipher the various "characters" of the revolution as it took form and to show the antinomies (i.e., nondialectical) incompatibilities) in each. Due to the nature of imperialism, the Russian revolution had three characteristics: it was anti-feudal, anti-bourgeois and anti-imperialist. A discussion of each of these characters form the three chapters of Campeanu's book.

The anti-feudal character of the revolution manifested itself in the peasants' efforts to take over the landed estates. A "mature" bourgeoisie would have allied itself with the peasants against the estate owners, but the Russian bourgeoisie — stilted by imperialism — defended the landlords. Hence, the anti-feudal peasant war inevitably took an anti-bourgeois form as peasant boys in uniform — the defeated Russian army — lay siege to the Provisional Government. For the Bolsheviks, the peasant land expropriations created obvious antinomies, since they were initially forced to support the creation of

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a class of small landholding peasants. As the Bolsheviks took power they would later expropriate the expropriators, using land decrees to deprive peasants of property ownership forcing them to render surpluses and quotas, and in the end making war on the peasantry during collectivization. The legacy of this antagonism between the party and the peasantry continues today in the chronic problems of Soviet agriculture, the food shortages, black market, cult of the private plot, etc.[3]

The anti-bourgeois character of the revolution was evident in the October insurrection. Yet the antinomies generated here were more serious. The bourgeoisie was a defender of feudal privileges. It had not, and would never play its role in fostering a developed capitalist society. Now the tasks of development would ordinarily have fallen to the proletariat, represented by the soviets. Yet the proletariat was demographically and organizationally weak. As Campeanu stresses time and again, it was "immature," being small in numbers, having ties with the (backward) peasant mentality, lacking revolutionary spirit. The soviets sought an accommodation with the bourgeoisie rather than seeking to overthrow them as a class. It was left to the Bolshevik party — a political organ — to "substitute" itself for the proletariat in pursuing anti-capitalist (not socialist) industrialization. The economic mechanisms of capitalist society were replaced by decrees and coercion. With its economic dominance defined by its political power, the party began to isolate itself from society. From its initial position as "leading force" of the Russian proletariat, the party began to elevate itself above the proletariat, subverting the soviets (and those political groups which supported them) and placing them under party control.

The emegence of monolithic party control over the soviets now compelled the party to take all measures to keep the proletariat politically "immature." The most militant or most opportunistic members of the proletariat could be coopted into the apparatus. The remainder could be bought off, threatened into submission, channeled into safer ideological pursuits like Great Russian chauvinism, or, if need be, jailed and executed. Since the Kronstadt rebellion, the supreme virtue of the Soviet proletariat has no longer been considered its militancy but its passivity and obedience.

The post-revolutionary party now assumed the task of non-capitalist industrialization. Yet since the proletariat was never a genuine participant in this effort, industrialization was only partially successful. Considered to be a momentary necessity — an anticipation of history — industrialization was pursued with coercion, violence, diktat, expropriation and a "generalized primitive accumulation." The structures created during this period of momentary necessity and the means of accumulation used have now been perpetuated beyond their historic need. The inherent incompatibilities in these

3. A graphic exposition of these problems can be found in Lev Timofeev's *Soviet Peasants: or the Peasants Art of Starving* (New York: Telos Press, 1985). *Telos* no. 68 contains a review symposium on Timofeev.

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structures are now reproduced. They must be reproduced in order for Stalinism to reproduce itself. This is the syncretic society, the antinomic necessity, of which Campeanu speaks.

The monolithism of the party — relying on its myth of infallible leadership during the revolution — inevitably gave way to the rise of the infallible leader within the party. Since the party was now anticipating history instead of acting under historical necessity, there was no coherent theory or strategy for use as a guide in pursuing anti-capitalist industrialization. Revelations of the infallible leader began to replace discussions of strategic possibilities. Hence, the once revolutionary party had to change its character: any group or competing leaders who could pose a challenge to the providential leader's infallibility had to be removed. Now some of these providential leaders may be more eloquent than others, some may be more crafty, but the cult of the infallible leader remains. In this sense, the "populist" leaders like Kadar or Gorbachev are no different than the "royalist" Ceausescu or Kim Il-Sung. One does not require Russian autarchic traditions or Soviet tanks to explain this; rather, it is the immaturity of the historically necessary classes, the exigencies of non-capitalist industrialization and the inability of post-revolutionary parties to formulate a suitable theory or strategy which are sufficient causes of Stalinist personality cults. Subjectivity is objectively conditioned.

In the ideological sphere "Leninism," which was a coherent strategy for achieving revolution, became "Marxism-Leninism," a degenerated ideology/mythology used solely to legitimate the "new" party and the leader's periodic revelations of policy.

The third characteristic of the October insurrection was its anti-imperialism. Anti-imperialism was manifested in the actions of the army, which returned from the front and refused to fight against peasants and workers. Following the revolution, the USSR was forced to come to terms with imperialism, which not only meant giving up a sizable portion of its western territories (later to be recovered by Stalin), but also giving up its long-term goal of socialism. With the failure of the international proletariat to come to its aid, "the energy generated by revolutionary militance was rechanneled into Soviet patriotism . . . casting present day Russians in the role of the chosen people" (p. 162). From this accommodation with imperialism arose Stalinist neo-imperialism.

Since then the Soviet Union's relations with its allies have been much more volatile than with its enemies. Harsh polemics, periods of tension, invasions and wars have been part of the normal course of relations among countries which seem to be near mirror images of each other; this is true in Eastern Europe and in Asia. Campeanu mentions that the USSR has in fact had diplomatic military or near-military confrontations with two-thirds of its closest allies. It is worth remarking here that Europe's two most Stalinist states — Albania and Romania — have been among those who have had the most tense relations with the Soviet Union (while Yugoslav-Soviet relations were

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most hostile when Yugoslavia was in its highest form of Stalinism).

Does Campeanu have any solution to the Stalinist dead-end which he presents? In a half-hearted way, yes. He wants a better theory for achieving anti-capitalist industrialization, restrictions on the party's monopoly over both property and political power, or at least a means of preventing this control from "ossification." Yet Campeanu cannot specify how his antinomic Stalinism could generate the kind of objective conditions so that such reforms could become a reality. Efforts toward reform in Central Europe have always foundered on the Soviet Union's defense of its strategic interests. Within the Soviet Union itself, more than a half-century of Stalinism has apparently succeeded in keeping the Soviet working class sufficiently "immature," preoccupied, apathetic or suppressed so that any challenge to the apparatus is out of the question. Even a party-led reform movement could never do anything to harm the bedrock of Stalinism — "the leading role of the party."

Looking beyond the USSR's immediate geopolitical orbit, we see no prospects for transforming the antinomy of Stalinism into any dynamic evolution toward genuine socialism. From Albania to Mozambique, from Ethiopia to China, from Cuba to South Yemen, efforts toward anti-capitalist industrialization have led only to classical Stalinism (Albania), developmental dead-ends (Cuba), pleas for re-integration into the world market (Mozambique) or capitalist rebirth (China). If we read Campeanu correctly, the socialist project has failed because no society has ever traversed the boundary between anti-capitalism and socialism.

Yet here Campeanu reveals the limitations of his Marxist analysis, as well as the frustrations of the original Trotskyist critique. Like Trotsky, Campeanu has managed to salvage "Socialism" and his beloved proletariat. For in order to save socialism from being contaminated by History, Campeanu must term as Stalinist all those societies whose socialism he does not like. If Stalinism has nothing to do with Russia, nor with Stalin, nor the Bolsheviks, nor with Lenin, nor with Marx, if Stalinism is the only kind of society in which party-led industrialization falters, then the category becomes too general to be of any importance. Moreover, Campeanu's emphasis on antinomic necessity certainly fails to account for the major changes which took place in Yugoslavia or the present party-led reversion to capitalism now taking place in China.

Although Campeanu ties Stalinism to the problem of achieving industrialization in the world of imperialism, he pointedly avoids two important test cases where industrialization has preceded Stalinism; namely, East Germany and Czechoslovakia. The East German case is termed too "special" to discuss due to its complex geopolitical situation. Stalinism in Czechoslovakia, meanwhile, was the result of "external pressures" and "an inclination toward blind imitation" (p. 178) which forced pre-industrial political-economic structures on an industrial society. Yet despite their Stalinist nature, both the DDR and Czechoslovakia are economically quite viable on a world scale, and would be much more so were it not for their forced integration into the Soviet

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economic sphere. What Campeanu avoids discussing completely, in his effort to show the independent invention of Stalinism in each society, is the nature of the Soviet world-system in all its political, economic and military nuances.

Campeanu has written a book in the true Marxist mold: full of "objective necessities," "historical forces," "mature" and "immature" classes, a book which offers a class analysis but which ends by asserting that class structure does not exist. Most of all, Campeanu's Marxist faith is reflected in his view that Leninism was "theory" while Stalinism was "without theory."

Of course Stalin had a theory. All Stalinists have theories. Of course he had a strategy. All post-revolutionary parties have strategy. The problem was that these theories and strategies had costs that proved unacceptable (for Campeanu) and byproducts that made them counterproductive. Stalin's "socialism in one country," priority of the productive forces, emphasis on heavy industry, collectivization at all costs, fortress Russia, were all as "theoretical" as Leninism was improvizational. For who was but more improvizational and theory-less than the Bolsheviks, as Campeanu himself shows. Were it not for Lenin's and Trotsky's willingness to substitute pragmatics for theory, there would have been no Bolshevik triumph. Improvization, subjectivity, tactical turns later justified as theory, all these are not only part of Stalinism but of Leninism too. Strategy and tactics are, after all, what Leninism is all about. The proper contrast is not between a theory-armed Lenin and a theory-less Stalinism, but between the theoretician Marx and revolutionaries of all sorts. Casting off theory (at the right time, of course), anticipating history, is the secret of all successful social movements.

Campeanu's analysis could have been better served if he had seen the conversion of the Old into the New Party in terms of general theories of how social movements become political institutions for which there is an enormous literature of Marxist, quasi-Marxist and non-Marxist orientation.[4] The study of the relation between social movements and their institutionalization invariably shows that institutions tend to create their own movements, just as Stalinism in Central Europe has tended to spawn the rebirth of Civil Society and reform movements of various stripes.[5] Since these reform movements take aim at key features of these systems — "leading role of the party," separation of economic control from political leadership, replacing infallibility with accountability — they are not as reformist as Campeanu would think. They are in fact quite revolutionary, which is why Stalinism resists them so harshly. Campeanu poses a question of why post-revolutionary movements tend to be without adequate strategy (p. 178). On the contrary, it is post-revolutionary parties, which tend to be without strategy; social *movements* with a myriad of strategies keep popping up all the time.

4. E.g, Francesco Alberoni, *Movement and Institution* (New York: Columbia University Press, 1984).

5. Timothy Ash, "Does Central Europe Exist?" in *New York Review of Books* vol. 33, no. 15 (October 9, 1986), pp. 45-52.

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For hard-core Marxists — especially those within East European states with archetypal Stalinist forms — analyzing Stalinism is obviously a key political task and a personal one. Yet to begin this task we must "deliver" socialism from its hermetically sealed womb. For socialism has neither degenerated from a glorious past, nor is it "on the horizon" in a radiant, post-Stalinist future. Socialism, Real Socialism, is here and now. This means that Marxists — and especially Marxists like Campeanu — must come to grips with this fact if the socialist project is to have any significance at all. If we do not realize *this* antinomy, then we can never realize that unity of the possible and the necessary which Bahro, Campeanu and so many others have wished for. Hopefully, Campeanu's forthcoming book will help us to look Real Socialism straight in the eye.

Steven Sampson

Jacques Attali, *Noise: The Political Economy of Music*, University of Minnesota Press (Minneapolis: 1985). Translated by Brian Massumi.

Attali subtitles his book "The Political Economy of Music," which, combined with the author's background as a professor of economic theory and an advisor to former French President Mitterrand, may warn the reader that this is a dry piece of Marxist analysis. Though Attali's historical analysis of music is thoroughly economic, his honest critiques of Marxism and his downright libertarian, utopian and anti-economistic conclusions are surprising and welcome. His points of reference are always wholly human and his vision is painted with imagination and colors that flow straight from the struggles of May 1968. In describing an evolution and anatomy of power through its tools in everyday life, which Attali has done with *Time*,[1] *Medicine*[2] and, in this case, music, power becomes demystified, its ghost can be seen, its end envisioned. *Noise* should be read by musicians, who are largely unaware of their historic role. It will serve as an inspiration, as a philosophical foundation for politically conscious artists, and as an encouragement to develop counter-institutions in the world of music, which I see as one of Attali's working solutions to the "state" of noise we are now in. Others should read *Noise* because we are all affected by music: we are all its listeners, its consumers. We all hum its tunes, mouth its lyrics. We all suppress the composer within us, and Attali describes how this keeps us caught in repetition, keeps us jailed.

1. *Histoires du Temps*, (Paris: 1982).
2. *L'Ordre Cannibale*, (Paris: 1979).

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"This music is not innocent," writes *le professeur*. At every stage, the musician — whether as shaman, minstrel or star — has had his or her relation to power. In the midst of a ritual, in the royal court, or on the radio, the beat is there, rebelling against or legitimizing rule, often both at the same time. Music makes people forget, it makes them believe. It gives the people voice in song, and it also silences them. Perhaps because he is not himself a musician (as of yet, anyway), Attali tends to focus on the historical aspects of the music/power relation rather than spell out a theory of the inherent power of music. He seems to suggest, though, that the subconscious, vibrational energy of music, combined with the idolatry of melodically-framed lyrics, gives music (and song, in particular) an immensely mysterious symbolic force which can maintain a confusing, sometimes schizophrenic and (dare I say) dialectical relation to power. It is, Attali insists, a two-way street. Power not only manipulates music, it sometimes calls the tunes. The tools for making music are so widespread and organic, the process so liberating, and the source meaning of music itself so existential, that musicians and their works are perennially rebelling against authority. Attali goes one step further in saying that music not only mirrors society as any art does (the spectacle of the orchestra paralleling the "theatre" of representative parliament, say) but is by its very nature prophetic: that being such a sensitive, responsive and partially subconscious art form, music can sense the social earthquakes — economic, political or otherwise — long before the rest of us can. Attali insists that the music of the 18th century describes the politics of the 19th. This prophecy is no oracle, though, but rather a warning: the present noise is a future danger.

There are four stages in Attali's historical development of music. The first is sacrifice where "music appears in myth as an affirmation that society is possible." Music is imbedded in ritual. In the second stage, music moves into the market-place: "the artist was born at the same time his work went on sale." This is the era of representation, when the musical structure of harmony comes to dominate as it epitomizes the bourgeois, mercantile notion of order and false utopia. Music escaped the dominance of harmony into the realm of repetition, only to find itself in a horrifying echo chamber. This is where we are now, in an age when "performance becomes the showcase for the phonograph record, a support for the promotion of repetition." The marriage of music and technology has created a "monologue of Power." "Without the loudspeaker," said Hitler, "we would never have conquered Germany." The commoditization of music has mirrored and even preceded the commoditization of all of our senses, needs, expressions and relations.

Yet, throughout this development, musicians — whether as wandering minstrels or as composers collecting royalties — have remained strangely aloof from their patrons, on the fringes of society and the dominant economy, paralleling the marginal nature of their music. Attali describes (at times with frustrating thoroughness), the historical attempts to integrate musicians into the mainstream economy. The divergent images of the starving artist and the

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wealthy star attest to the quirky economic nature of musicians. Within this anomaly lies the revolutionary potential of music.

Looking to the future, Attali describes the fourth stage of music, that of composition. Believing that "there exists in each person the potential for musical creation," he envisions a point where each person can, and indeed must become their own composer. It is here that music turns to face power itself and, with the vibrational force of a billion composers, destroys it. "Composition liberates time so that it can be lived, not stockpiled . . . Composition leads to a staggering conception of history, a history that is open, unstable . . ." Composition is thus a concept not only of musical creation but of daily creation in each and every part of our lives. The freedom to sing is the freedom to speak, to create and re-create all social relations, to banish all old codes, musical and otherwise. If we all become musicians, then no one is a slave, no one a master.

In the beginning, noise was chaos, to be counteracted by the creation of music which symbolized society and order. Yet even then the music interacted with noise — the creakings and howlings of nature — it listened to it, learned from it, called to it. Now we are inundated by the monologue of power, Muzak, the top 40, the rhythms of the machine age. There is now a kind of noise that represents rebellion, a crack in the oppressive order that was once harmony. Noise is the listening to oneself, nature's grumbling in your backyard, and then composing from there. We have come full circle, noise is now a friend, the companion of true music.

On a more pragmatic and less theoretical level, Attali discusses the concept of establishing counter-institutions of music to act as a kind of mid-wife for new forms and new ways of relating to music. As an example, he uses the Jazz Composer's Guild and the Association for the Advancement of Creative Musicians (AACM), and in particular the work of Archie Shepp. Though a failure, Attali praises the experiment and underlines its obvious ties to the experimental, spontaneous nature of the Free Jazz Movement and the music it created. Though he warns that "the self-management of the repetitive is still repetitive," he implies that hand-in-hand with creative composition, creative counter-institutions must be developed and resistance to the culture industry must be solidified.

Though originally published in France in 1977, *Noise* gives us the tools to discuss a few important musical technologies and phenomena that have emerged since then. MTV (which extends the "monologue of power" to a visual dimension) is a good case in point. It blinds us as well as deafens us with superficial splendor. It is the same old music adapting to a new technology, colonizing new senses, uniting with other symbols of power. Whatever "political" verses or creative images that may slip in are pounded to death by the beat of drum machines or dissipated by the time V.J. comes back on.

On "Aid" benefit concerts: the libertarian thesis of uniting festival and politics is trashed to a skeletal mimicry when largely burned-out performers

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repeat bad versions of dated material to convince middle-class Americans that spending money on vicarious pleasure can indeed be a political act. With few exceptions, the content of this "committed" music has nothing to do with the supposed aim of the benefit. So no one thinks it strange for Linda Ronstadt to sing "It's in his kiss" at a rally right after a woman speaker delivers a scathing feminist analysis of the patriarchal roots of the arms race. These concerts tend to re-inforce tragically failed stategies of dealing with hunger and torture and other global problems while creating the illusion of a politically-based music.

The new technology of the "Walkman" has also proliferated greatly since Attali's book. The physical dimension of the "monologue of Power" has become simply less subtle. The Muzak speaker is no longer hidden in the ceiling. It is between your ear and the mouth of the person standing next to you. There's no need for the state to eavesdrop in such a society: you have got nothing to say and your neighbor could not hear you even if you did.

Because we have not yet reached the stage of composition, Attali is not yet a musician and herein lies a problem in his analysis of the repetitive stage. He does not credit enough the positive, creative aspects of the recording process. It is so wholly a different thing from peforming that it must be examined more on its own terms. There are threads of composition in recording — it is very much like sound sculpture — though the process, in the end, may still be discarded as a consumerist-oriented detour.

Attali also seems to understate the need for community in the state of composition. The theory seems to err in being libertarian to an extreme. Yes, the first impulse in composition may still be pleasure, but pleasure itself can and must turn outward, and transform into communication. Music must be the creation of community as well as of the self.

Music is the "heartbeat of a heartless world," to paraphrase Marx. It is promise and communication. It is sirens singing and a cop siren wailing, lullabies and national anthems, inspirations and excuses. It is, as Attali states, "a battlefield." It is rock & roll, the ultimate rebel music turned Voice of America, a melody trying to transcend the alienation of modern life with the very sounds of alienation itself: the sharp, inorganic, metallic screeches of electric guitar and bass and drums that make us all feel so "connected." Music can be a diversion or a challenge. "Born to Lose" or "Born to Win" said Woody Guthrie. It can be redemptive or the chorus of our own damnation. Attali pleads: "Transform the world into an art form and life into a shifting pleasure. Will a sacrifice be necessary? Hurry up with it — while we are still within earshot — because the world, by repeating itself, is dissolving into noise and violence."

Jonathan Stevens

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Henry Flakierski, *Economic Reform & Income Distribution. A Case Study of Hungary and Poland.* (M.E. Sharpe Inc.: Armonk, New York/London, 1986), 194 pp.+xi.

The question of the relation between the economic reforms introduced in or contemplated by the East European communist countries (including nowadays the Soviet Union as well) and China, and the pattern of income distribution is obviously of great interest: how will the increased use of market mechanisms affect the degree of inequality? Strong views on the matter are frequently voiced both by proponents and opponents of market-oriented reforms, but there is surprisingly little empirical evidence based on systematic research. To my knowledge the work under review is the first *book* with such an explicit objective. Two countries have been selected for detailed analysis: Hungary, where since 1968 the so-called 'New Economic Mechanism' is in operation, and Poland in the 1970s where the command economy remained basically unchanged. The data analysed are mainly from the 1970s. Flakierski tries to pre-empt the question of why he has not brought into the picture Yugoslavia "where marketization of the economy has been most advanced?" (p. 37). The answer given ("the Hungarian model has much more potential to be emulated in other socialist countries . . . because the macroeconomic consequences of a full marketization — as in Yugoslavia — are profoundly feared in those countries," and that "the Yugoslav reality is now [after attempts to introduce "some form of central planning" — WB] more similar to the Hungarian than before," pp. 37-39) is not entirely convincing. Another omission is that only the structure of offical earnings is considered, without taking into account the 'second economy' whose influence may be substantial. However, as the link between the specific weight of the 'second economy' and a market-oriented reform is by no means clear, this issue may be regarded as a separate one.

The book consists of five chapters, three of which (plus appendix) present the results of statistical investigations: distribution of wages and salaries in Hungary and Poland (ch. II), followed by an analysis of the distribution of per capita household income in Hungary (ch. III) and in Poland (ch. IV). The separate examination of the distribution of earnings from that of household incomes is most appropriate because it allows one to distinguish between the incentive aspects of distribution and those of social nature. Such a distinction is particularly important here since it helps clarify whether, and to what degree, undesirable features of primary distribution (e.g., excessive income differentials generated by spontaneous market forces) can be corrected by deliberate state measures. Needless to say, the relevance of the conclusions depends on the comprehensiveness and quality of the statistical material, which is carefully assessed by the author, along with the enumeration of the (conventional) measures of inequality applied (last section of ch. I). Although

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I am not an expert in statistical analysis, I find the data used in Flakierski's book comparatively good, and thus the conclusions he reaches merit serious discussion.

Chapters I and V are not limited to setting out the main objectives or to summarizing the findings, but examine a number of broader themes related to income distribution under socialism and social justice in general. This is particularly true of chapter V which examines the programmatic attitude of the independent Polish trade union 'Solidarity' to egalitarianism and the marketization of the economic system. Although these problems deserve considerable attention, the main issue of the book is of such significance that I will focus on it alone.

Looking back at the experience of serious East European reform movements, it seems that the perception of a market-oriented economic reform as threatening the egalitarian pattern of income distribution had never been of great concern. This was certainly the case during the hey-days of the reform movement in Poland in 1976-7, and not only among the intellectual "designers" but also among the rank-and-file workers pressing for self-management of enterprises. The reason for this lay probably in the fact that, on the one hand, economic incentives were widely perceived as weak and badly constructed and, on the other, a great deal of inequality was created outside the operation of any market mechanism — by central policy of large earnings differentials and by disguised system of privileges. It was against this experience that the bitter feelings of failure of the egalitarian promise of socialism and of the emergence of new class divisions became widespread. Rather similar had been the attitudes in the course of the abortive 'second wave of economic reforms' in the 1960s in the GDR, USSR and Czechoslovakia — in the latter case perhaps slightly less so in view of the relative flatness of earnings differentials under the old system. I was therefore surprised that East European reforms were met with such vehement criticisms from the Western Left precisely, although not exclusively, on this point. Thus, I have argued[1] that the change of the system of incentives envisaged in the reform does not in itself pre-determine a widening of income differntials, and that linking of renumeration with enterprises' performance influenced also by market phenomena (albeit regulated) would affect mainly *horizontal* differentials (between workers of different enterprises) which ought not to be treated as permanent, and should not have the stratifying consequences of vertical differentials (between different social groups). My argument was based on a reform conducted along the lines of a 'model of centrally planned economy with regulated market mechanism' (thus not of unrestricted marketization), and was only weakly supported by a few data showing no correlation between decentralization and wider income differentials in Poland in the 1960s and early 1970s.

1. Wlodzimierz Brus, "Income Distribution and Economic Reform in Poland," in *Il Politico*, vol. XXXIX, n. 1, (1974).

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A much more substantive empirical analysis of the same problem has been provided by Levčik.[2] The examination of three countries (Hungary, Poland and Czechoslovakia) during the periods of more or less consistent decentralizing and market-widening measures compared with the times of strict centralization, led him to conclude that "the development of earnings differentials in the course of economic reforms is a result of interaction between market forces and government earnings policy. It is quite possible, even probable, that this may lead to phenomena of greater inequalities in earnings in certain enterprises or between enterprises of the same sector. However, the general income stratification has hardly been affected by this, and the assertions that this kind of reform has created income differentials incompatible with the principles of socialism cannot be substantiated by the examination of the published data."

Flakierski's book presents an important further step in dealing with this issue, both because of the comprehensiveness of his approach, and of the longer time span he considers. The conclusions are by no means one-dimensional. What must be emphasized is how the author consistently takes strong egalitarian positions and makes frequent value judgements from that viewpoint.

By and large, Flakierski's findings seem to support the conclusions reached by myself and Levčik. As far as the dispersion of earnings is concerned, the post-reform period in Hungary from 1966 to 1978 shows some increase for the socialized sector. Yet, in un-reformed Poland, the direction of change was the same, with the absolute scale of dispersion substantially higher there. As far as dispersion of household income is concerned, this has declined in Hungary over the period in question, among other things under the impact of an increase in the share of social benefits and relatively greater equality in their distribution. Neither in Hungary nor in Poland has there been an increase in earnings differentials of a vertical nature, i.e., between major occupational groups. Similarly, the relative position of technical and administractive personnel to that of manual workers in industry has markedly declined.

Special attention is paid in the book to the clearly pronounced distinction between two subperiods in post-reform distributional trends in Hungary: 1966-74, when the dispersion of wages increased, and 1974-80, when a decline of dispersion occurred. The change of direction in 1974 was evidently a reaction to earnings differentials judged excessive by the central authorities. But what about the greater dispersion in the initial sub-period? Should this be attributed to the economic reform? Here is the author's interpretation: "The increase in the dispersion of earnings in 1966-74 . . . can in some sense be attributed to the New Economic Mechanism. Logically it may be claimed that there is a strong positive correlation between effective functioning of the

2. Friedrich Levčik, "Economic Reform and Wage Differential," published as special paper n. 59 by The Vienna Institute for Comparative Economic Studies in Nov. 1981.

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regulated market mechanism and a state policy of nonegalitarian income distribution because a so-called take-off period for successfully implementing the new mechanism depended on a deliberate widening of wage-differentials by the state. It is therefore not so much the spontaneous forces of the market that can be 'blamed' for increased inequalities of pay as the state's deliberate policy of creating preconditions for effective operation of the market mechanism in general and incentives in particular." (p. 47-52)

The overall conclusion is rather unequivocal: "The comparative analysis of Poland and Hungary permits us to conclude that the claim of some economists and sociologists that market reforms always mean an increase in the inequality of earnings is not justified. We observe, rather, the lack of automatic correlation between economic reform and the dispersion of earnings. Our analysis has shown that a socialist country with a highly centralized system of management can have larger inequalities in the distribution of earnings and in per capita income than a more decentralized market-oriented economy." (p. 126)

I do not find this entirely satisfactory, not because of doubts about the adequacy of the statistical picture or its interpretation. It is not the distributional but the systemic variable that looks problematic: can Hungary be regarded as a country which has already carried out a genuine market-oriented reform? If, as many claim, this is yet not the case and state paternalism and lack of sufficient market pressure still persist in the Hungarian economy, the distributional phenomena presented in the book may be interpreted not so much as a disclaimer of the inegalitarian consequences of the reform, but as indirect evidence that the reform does not operate properly. From this viewpoint, the shift in the dispersion-trends around 1974 deserves another look: it is well known that this was the time of a clear anti-reformist backlash (stopped and gradually reversed at the very end of the decade). Hence, the correlation between the two subperiods in distribution and in the degree of marketization could be more meaningful.

At any rate, the matter is not yet definitely resolved, despite Flakierski's valuable contribution.

Wlodzimierz Brus

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